STATE TRIALS

(In four vols.)

First impression, March 1899
Second impression, September 189

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William Lord Russell

STATE TRIALS

POLITICAL AND SOCIAL

SELECTED AND EDITED

BY H. L. STEPHEN

First Series

IN TWO VOLUMES

VOL. II

LONDON

DUCKWORTH AND CO

1899

Edinburgh T and A Constable, Printers to Her Majesty

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LORD RUSSELL

VOL. II.

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LORD RUSSELL

Lord Russell's trial marks the moment in the latter part of Charles II.'s reign when his power reached its highest point. The Exclusion Bill was thrown out by the House of Lords in 1680, and though Stafford was tried and executed at the end of the year, the dissolution of the short-lived Oxford Parliament in April 1681 left the Country party, who had just acquired the name of Whigs, in a temporarily hopeless position. On the 2nd of July in the same year Shaftesbury was arrested on a charge of suborning witnesses in the Popish Plot, but the bill presented against him was thrown out by the Grand Jury, which had been packed in his favour by a friendly sheriff, and he was liberated in November. An unscrupulous exercise of the power of the Court led to North (brother of the Chief-Justice of the Common Pleas, soon to become Lord Keeper) and Rich being sworn in as sheriffs in June 1682, and Shaftesbury, no longer being able to rely on his City friends, retired into hiding and entered on the illegal practices described in Russell's trial. The security afforded to the opponents of

the Court was further diminished in 1683 by the suppression of the charter of the City by a writ of Quo Warranto, which, although it was too late to have any effect on Russell's conduct, may help to justify it. The position of the Country party thus appeared desperate. The King had contrived to overcome all constitutional means of opposition; Shaftesbury's unscrupulous policy had alienated most of his natural adherents; his violent disposition made it impossible for his remaining followers to take advantage of the difficulties which the King was preparing for himself and his successor; and by anticipating the crisis of 1688, Shaftesbury, Essex, and Russell brought down destruction on themselves.

Lord Russell was tried at the Old Bailey on the 13th of July 1683 before the Lord Chief-Justice, Sir Francis Pemberton,[1] the Lord Chief-

[1] Sir Francis Pemberton was born 1625, entered Emmanuel College 1640, entered the Inner Temple 1645, was called 1654, was made a bencher 1671, a serjeant 1675, and was imprisoned by the House of Commons for an alleged breach of privilege in the same year. He was made a Judge of the King's Bench in 1679, and took part as such in several trials connected with the Popish Plot; he was discharged in 1680, returned to the bar, and replaced Scroggs as Chief-Justice of the King's Bench in 1681. He was moved to the Common Pleas in 1683, to allow Sir Edmund Saunders, who had advised in the proceedings against the City of London, to act as judge in the case. He was dismissed from his office of judge in the same year, about five weeks after Lord Russell's trial. Returning to the bar, he helped to defend the Seven Bishops, but was imprisoned by the Convention Parliament for a judgment he

Baron, Mr. William Montague, and nine other judges. There appeared for the prosecution the Attorney-General, Sir Robert Sawyer,[1] the Solicitor-General, Mr. Finch,[2] Serjeant Jeffreys,[3] Mr. North.[4]

had given six years before against Topham, the serjeant-at-arms, who had claimed to be without his jurisdiction. He bore on the whole a high character for independence and honesty; and it is curious to learn that he lived to advise the Earl of Bedford whether Lord Russell's attainder would prevent his son succeeding to the earldom.

[1] Sir Robert Sawyer was born in 1633, entered Magdalene College, Cambridge, in 1648, where he was chamber-fellow with Pepys, joined the Inner Temple and went the Oxford circuit. He was elected to the House of Commons for Chipping Wycombe in 1673, and assisted in drafting the Exclusion Bill. He appeared for the Crown in most of the State Trials of this period. He afterwards led in the defence of the Seven Bishops, took part in the Convention Parliament, and was expelled from the House on account of his conduct in Armstrong's case. He was re-elected and became Chief-Justice of the King's Bench in 1691, and died in 1692.

[2] Heneage Finch, first Earl of Aylesford, was born about 1647: he was educated at Westminster and Christ Church. He entered the Inner Temple, became Solicitor-General in 1679, being elected to the House of Commons for the University of Oxford in the same year. He was deprived of office in 1686, and defended the Seven Bishops. He sat in the House of Commons in 1685, in all Parliaments from the Convention Parliament (1689) till he became a peer in 1703, under the title of Baron Guernsey. He was made Earl of Aylesford on the accession of George I. (1714), and died in 1719.

[3] See vol. i. p. 240.

[4] Francis North, Lord Guilford (1637-1685), the third son of the fourth Lord North, was educated at various Presbyterian schools and St. John's College, Cambridge. He was called to the bar in 1661, and with the help of the Attorney-General,

The charge against Lord Russell was that he was guilty of high treason in conspiring to depose and kill the King, and to stir up rebellion against him. To this he pleaded Not Guilty.

He objected that he ought not to be arraigned and tried on the same day, to which it was replied that he had had more than a fortnight's notice of his trial and the facts alleged against him by having questions put to him when he was in custody in the Tower. On the first juror being called, Lord Russell objected that he was not a 40s. freeholder in the City. He was allowed to have counsel assigned to him to argue as to whether this was a good ground of objection; the counsel he chose were Pollexfen,[1] Holt,[2] and

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Sir Geoffrey Palmer, soon acquired a large practice. After holding various provincial posts, he became Solicitor-General in 1671. He entered Parliament in 1673, and became Attorney-General the same year, becoming Chief-Justice of the Common Pleas in 1675. He always strongly supported Charles II.'s government, temporising during the Popish Plot, and being chiefly responsible for the execution of Colledge. He became Lord Keeper in 1682, and was raised to the peerage in 1683: but during his tenure of office was much vexed by intrigues, particularly by the conduct of Jeffreys, who had succeeded him in the Common Pleas. He is now chiefly remembered on account of the very diverting and interesting life of him written by his brother Roger.

[1] Pollexfen. See Note in Alice Lisle's trial, vol. i. p. 241.

[2] Sir John Holt (1642-1710) was called to the bar in 1663. He appeared for Danby on his impeachment in 1679, and was assigned to be counsel for Lords Powys and Arundell of Wardour, who were impeached for participation in the Popish Plot in 1680, but against whom the proceedings were stopped

Ward. The question was whether the statute 2 Hen. v. c. 3, which enacted that in the case of capital offences the jurors must have lands of the yearly value of 40s., applied to trials for treason or to trials in the City. It was decided by all the judges that it did not,[1] the objection was overruled, and a jury was sworn without any challenges being made.

North then shortly opened the case. He alleged that in the previous October and November a council consisting of Russell, the Duke of Monmouth, Lord Grey,[2] Sir Thomas

after Stafford's conviction. He appeared for the Crown in several trials preceding that of Lord Russell, and having expressed an opinion in favour of the Quo Warranto proceedings against the City of London was appointed Recorder, knighted, and called as a serjeant in 1685. He was deprived of the recordership after a year on refusing to pass sentence of death on a deserter, a point which owed its importance to Charles II.'s attempts to create a standing army; but as he continued to be a serjeant, he was unable thenceforward to appear against the Crown. He acted as legal assessor to the Convention called after the flight of James II., as a member of the House of Commons took a leading part in the declaration that he had abdicated, and was made Chief-Justice in 1689.

[1] This decision and unspecified 'partial and unjust constructions of law' were the professed ground on which Russell's attainder was subsequently reversed: see *post*, p. 56. Sir James Stephen (*Hist. Crim. Law*, vol. i. p. 412) expresses an opinion that the law upon the subject at the time was 'utterly uncertain.'

[2] Lord Grey was the eldest son of the second Baron Grey of Werk. He succeeded his father in 1675: he voted for Stafford's conviction, and was a zealous exclusionist. He was convicted of debauching his sister-in-law, Lady Henrietta

Armstrong, and one Ferguson, were plotting a rising in conjunction with the Earl of Shaftesbury. The Earl was anxious that the opportunity of the celebration of Queen Elizabeth's birthday on the 19th of November should be used for the purpose. The conspirators objected to this on the ground that Trenchard, who was to have headed a rising in the West, was not ready. On this Shaftesbury and Ferguson left the country, and the so-called council was re-organised by Armstrong and Grey being left out, and Lord Howard,[1] Lord Essex,[2]

Berkeley, in 1682, and consequently took no part in Russell's plot. He was arrested in connection with the Rye House Plot, but escaped to Holland, whence he returned to take part in Monmouth's rising. He was captured after Sedgemoor, but his life was spared on his being heavily fined and compelled to give evidence against his friends. He left England, but returned with William III., during whose reign he filled several offices. He was created Earl of Tankerville in 1695, and died in 1701.

[1] Lord Howard, the third Lord Howard of Escrick, was born about 1626. He entered Corpus College, Cambridge. He served in Cromwell's Life-guards. As a sectary he seems to have favoured the Restoration. He was committed to the Tower for secret correspondence with Holland in 1674. After succeeding to the peerage he furthered the trial of his kinsman Stafford. After giving evidence in this trial (see p. 15), he gave similar evidence against Algernon Sidney, was pardoned, and died in obscurity at York in 1694.

[2] The Earl of Essex was the son of the Lord Capel who was one of Charles I.'s most devoted adherents and lost his life after his vain defence of Colchester in 1648. The younger Lord Capel was made Earl of Essex at the Restoration. Though opposed to the Court party by inclination, he

Colonel Algernon Sidney,[1] and Mr. Hamp-

served on various foreign missions, and was Lord-Lieutenant of Ireland from 1672 to 1677. On his return to England he associated himself with the Country party, and on Danby's fall was placed at the head of the Treasury Commission, and thereafter followed Halifax and Sunderland in looking to the Prince of Orange for ultimate assistance rather than Shaftesbury, who favoured the Duke of Monmouth. He left the Treasury in 1679, supported Shaftesbury in 1680 on the Exclusion Bill, and appeared as a 'petitioner' at Oxford in 1680. He voted against Stafford. He was arrested as a co-plotter with Russell on Howard's information, and committed suicide in the Tower on the day of his trial (see p. 16).

[1] Algernon Sidney (1622-1683) was the son of the second Earl of Leicester, and commanded a troop in the regiment raised by his father, when he was Lord-Lieutenant in Ireland, to put down the Irish rebellion of 1641. He afterwards came over to England, joined the Parliamentary forces, and was wounded at Marston Moor. He continued serving in various capacities, returning for a time to Ireland with his brother, Lord Lisle, who was Lord-Lieutenant. He was appointed one of the commissioners to try Charles I., but took no part in the trial. He was ejected from Parliament in 1653, and adopted a position of hostility to Cromwell. He remained abroad after the Restoration, though not excepted from the Act of Indemnity, and lived a philosophic life at Rome and elsewhere. He tried to promote a rising against Charles in Holland in 1665, and opened negotiations with Louis XIV. during the French war. He returned to England in 1677 to settle his private affairs, and stayed on making friends with the leaders of the Opposition, and vainly trying to obtain a seat in the House of Commons. He quarrelled with Shaftesbury, who denounced him as a French pensioner (which he probably was), and seems to have had no connection with his plots. He was arrested on 27th June, tried by Jeffreys on 7th November, condemned, and executed on 7th December 1783.

den,[1] being taken in. Frequent consultations were held at Russell's house, and Aaron Smith was despatched to Scotland to arrange a rising on the part of the malcontents there.

Rumsey[2] was called, and being sworn deposed

[1] John Hampden (1656-1696) was the second son of Richard Hampden. After travelling abroad in his youth he became the intimate friend of the leaders of the Opposition on his return to England in 1682. He was arrested with them and tried in 1684, when he was imprisoned on failing to pay an exorbitant fine. After Monmouth's rising he was tried again for high treason. As Lord Grey was produced as a second witness against him, Lord Howard, who had testified before, being the first, he pleaded guilty, implicating Russell and others by his confession. He was pardoned, and lived to sit in Parliament after the Revolution; but falling into obscurity failed to be elected for his native county in 1696, and committed suicide.

[2] Rumsey had been an officer in Cromwell's army, and had served in Portugal with distinction. He obtained a post by Shaftesbury's patronage; and with West, a barrister, was responsible for the Rye House Plot. According to his own account, he was to kill the King, whilst Walcot was to lead an attack on the guards. He appeared as a witness in the trials of Walcot and Algernon Sidney, as well as in the present one. His last appearance before the public was as a witness against Henry Cornish, one of the leaders of the opposition of the City to the Court party, whom he and one Goodenough accused of participation in Russell's plot, and who was tried and executed in 1785. He had offered to give evidence against Cornish before, in 1783, but the second witness necessary to prove treason was not then forthcoming. The unsatisfactory nature of Rumsey's evidence led to Cornish's property being afterwards restored to his family, while, according to Burnet, 'the witnesses were lodged in remote prisons for their lives.' Cornish was arrested, tried and executed within a week.

that at the end of October or the beginning of November Shaftesbury had sent for him to his lodgings in Wapping, where he was hiding, and told him to go to the house of one Sheppard, where he could find Monmouth, Russell, Grey, Armstrong, and Ferguson, and to ask what resolution they had come to as to the rising at Taunton. He took this message accordingly, and received an answer that Trenchard had promised 1000 foot and 300 horse, but had failed them. Most of this answer was delivered by Ferguson, but others, including Russell, were in the room at the time.

ATTORNEY-GENERAL—Was there nothing of my lord Shaftesbury to be contented?

RUMSEY—Yes, that my lord Shaftesbury must be contented; and upon that he took his resolution to be gone.

LORD CHIEF-JUSTICE—Did you hear any such resolution from him?

RUMSEY—Yes, my lord.

Shaftesbury told him of the meeting; he was not there more than a quarter of an hour; he heard something of a declaration to be made, either there, or on a report of Ferguson's.

JEFFREYS—To what purpose was the declaration?

LORD CHIEF-JUSTICE—We must do the prisoner that right; he says he cannot tell whether he had it from him or Mr. Ferguson.

There was some discourse begun by Arm-

strong as to the posture of the guards at the Savoy and at the Mews. *Monmouth, Grey, and* Armstrong, in Russell's presence, undertook to see the guards,

with what care and vigilance they did guard themselves at the Savoy and Mews, whether they might be surprised or not.

The rising was to be on the 19th of November. It was arranged by Shaftesbury that he himself was to go to Bristol, in what capacity it was not stated.

JEFFREYS—If my lord Russell pleases to ask him any questions he may.

LORD RUSSELL—I have very few questions to ask him for I know little of the matter; for it was the greatest accident in the world I was there, and when I saw that company was there I would have been gone again. I came there accidentally to speak with Mr. Sheppard; I had just come to town, but there was no discourse of surprising the guards, nor no undertaking of raising an army.

LORD CHIEF-JUSTICE—We will hear you to anything by and by, but that which we desire to know of your lordship is, as the witnesses come, to know if you would have any particular questions asked of them.

On being pressed by Russell, Rumsey repeated that Russell 'did discourse of the rising' at Taunton and consented to it.

Sheppard was called, and deposed that in

October Ferguson came to him in Monmouth's name,

and desired the conveniency of my house, for him and some other persons of quality to meet there. As soon as I had granted it, in the evening the duke of Monmouth, my lord Grey, my lord Russell, sir Thomas Armstrong, col. Rumsey and Mr. Ferguson came. Sir T. Armstrong desired me that none of my servants might come up, but they might be private; so what they wanted I went down for, a bottle of wine or so.

He confirmed Rumsey's evidence as to the discourse about surprising the guards; Monmouth, Grey, and Armstrong went out to view them at the Mews; the next time they met Armstrong reported

the guards were very remiss in their places, and not like soldiers, and the thing was feasible, if they had strength to do it.

There were two meetings: he had notice of them; the company came in the evening; he saw no coaches; Lord Russell came both times.

JEFFREYS—Do you remember that col. Rumsey at the first time, had any discourse about any private business relating to my lord Russell?

SHEPPARD—No, I do not remember it.

ATTORNEY-GENERAL—Besides the seizing of the guards did they discourse about rising?

SHEPPARD—I do not remember any further discourse, for I went several times down to fetch wine, and sugar, and nutmeg, and I do not know what was said in my absence.

He remembered that a paper was read 'somewhat in the nature of a proclamation,' setting forth the grievances of the nation 'in order to a rising.' It was read by Ferguson, but he could not say whether they were all present or not.

Cross-examined by Lord Russell, he could not be positive as to the time of the meetings; they were at the time that Lord Shaftesbury was absent from his house, and he absented himself about Michaelmas day.

LORD RUSSELL—I never was but once at your house, and there was no such design as I heard of. I desire that Mr. Sheppard may recollect himself.

SHEPPARD—Indeed my lord I can't be positive in the times. My lord I am sure was at one meeting.

LORD CHIEF-JUSTICE—But was he at both?

SHEPPARD—I think so; but it was eight or nine months ago, and I can't be positive.

LORD RUSSELL—I can prove I was then in the country. Col. Rumsey said there was but one meeting.

COL. RUMSEY—I do not remember I was at two; if I was not, I heard Mr. Ferguson relate the debates of the other meeting to my lord Shaftesbury.

LORD RUSSELL—Is it usual for witnesses to hear one another?

LORD CHIEF-JUSTICE—I think your lordship need not concern yourself about that; for I see the witnesses are brought in one after another.

LORD RUSSELL—There was no design.

JEFFREYS—He hath sworn it.

ATTORNEY-GENERAL—Swear my lord Howard (which was done). Pray will your lordship give an

account to the Court, what you know of a rising designed before my lord Shaftesbury went away, and afterwards how it was continued on.

LORD HOWARD—My lord, I appear with some confusion. Let no man wonder that it is troublesome to me. My lord as to the question Mr. Attorney puts to me, this is the account I have to give: It is very well known to every one, how great a ferment was made in the city, upon occasion of the long dispute about the election of sheriffs; and this soon produced a greater freedom and liberty of speech one with another, than perhaps had been used formerly, though not without some previous preparations and dispositions made to the same thing. Upon this occasion among others, I was acquainted with captain Walcot,[1] a person that had been some months in England, being returned out of Ireland, and who indeed I had not seen for eleven years before. But he came to me as soon as he came out of Ireland, and when these unhappy divisions came, he made very frequent applications to me; and though he was unknown himself, yet being brought by me, he soon gained a confidence with my lord Shaftesbury, and from him derived it to others. When this unhappy rent and division of mind was, he having before got himself acquainted with many persons of the city, had entered into such counsels with them, as afterwards had the effect, which in the ensuing narrative I shall relate to your

[1] Walcot was an Irish gentleman who had been in Cromwell's army. He frequented West's chambers, where he met West and Rumsey, who were the principal witnesses against him. Rumsey's story was that though Walcot objected to killing the King, he promised to attack the guards. He was tried and convicted earlier on the same day.

lordship. He came to me, and told me, that they were now sensible all they had was going, that this force put upon them——

Lord Chief-Justice—Pray my lord, raise your voice, else your evidence will pass for nothing.

One of the Jury—We cannot hear my lord.

Lord Howard—There is an unhappy accident happened that hath sunk my voice: I was but just now acquainted with the fate of my lord of Essex. My lord, I say, he came to me, and did acquaint me, that the people were now so sensible that all their interest was going, by that violence offered to the city in their elections, that they were resolved to take some course to put a stop to it, if it were possible: He told me there were several consults and meetings of persons about it, and several persons had begun to put themselves into a disposition and preparation to act; that some had furnished themselves with very good horses, and kept them in the most secret and blind stables they could. That divers had intended it, and for his own part he was resolved to imbark himself in it. And having an estate in Ireland, he thought to dispatch his son thither (for he had a good real estate, and a great stock, how he disposed of his real estate, I know not); but he ordered his son to turn his stock into money to furnish him for the occasion: This I take to be about August, his son was sent away. Soon after this the son not being yet returned, and I having several accounts from him, wherein I found the fermentation grew higher and higher, and every day a nearer approach to action I told him I had a necessity to go into Essex to attend the concerns of my own estate; but told him how he might by another name convey letters to me, and

gave him a little cant, by which he might blind and disguise the matter he wrote about when I was in the country.

I received two or three letters from him, that gave me an account in that disguised style, but such as I understood, that the negotiation which he had with my correspondents was going on, and in good condition; and it was earnestly desired I would come to town; this was the middle of September.

I notwithstanding, was willing to see the result of that great affair, upon which all men's eyes were fixed, which was the determination of the shrivalty about that time. So I ordered it to fall into town, and went to my own house Saturday night which was Michaelmas Day.

On Sunday he came to me and dined with me, and told me (after a general account given me of the affairs of the times) that my lord Shaftesbury was secreted and withdrawn from his own house in Aldersgate Street; and that though he had a family settled, and had absconded himself from them, and divers others of his friends and confidents; yet he did desire to speak with me, and for that purpose sent him to shew me the way to his lodging: He brought me to a house at the lower end of Wood Street, one Watson's house, and there my lord was alone. He told me he could not but be sensible, how innocent soever he was, both he and all honest men were unsafe, so long as the administration of justice was in such hands as would accommodate all things to the humour of the court. That in the sense of this he thought it but reasonable to provide for his own safety by withdrawing himself from his own house into that retirement. That now he had ripened affairs to that

head, and had things in that preparation, that he did not doubt but he should be able, by those men that would be in readiness in London, to turn the tide, and put a stop to the torrent that was ready to overflow. But he did complain to me, that his design, and the design of the public, was very much obstructed by the unhandsome deportment of the Duke of Monmouth, and my lord Russell, who had withdrawn themselves not only from his assistance, but from their own engagements and appointments: For when he had got such a formed force as he had in London, and expected to have it answered by them in the country, they did recede from it, and told him they were not in a condition or preparation, in the country, to be concurrent with him at that time. This he looked upon but as an artificial excuse, and as an instance of their intentions wholly to desert him: but notwithstanding there was such preparation made in London, that if they were willing to lose the honour of being concurrent with him, he was able to do it himself, and did intend speedily to put it into execution. I asked him what forces he had? He said he had enough. Says I, What are you assured of? Says he, There is above ten thousand brisk boys are ready to follow me, whenever I hold up my finger. Says I, How have you methoded this, that they should not be crushed, for there will be a great force to oppose you? Yes, he answered, but they would possess themselves of the gates; and these ten thousand men in 24 hours would be multiplied into five times the number, and be able to make a sally out, and possess themselves of Whitehall, by beating the guards. I told him this was a fair story, and I had reason to think a man of his figure would not

undertake a thing that might prove so fatal, unless it were laid on a foundation that might give a prudent man ground to hope it would be successful.

He said he was certain of it, but confessed it was a great disappointment that these lords had failed him. I told him, I was not provided with an answer at that time; that he well knew me, and knew the general frame and bent of my spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weighed and considered of: and did not think it a thing fit to be entered upon, without the concurrence of those lords. He did consent, with much ado, but, says he, you will find they will wave it, and give doubtful and deferring answers, but you will find this a truth.

I went to Moor Park next day, where the Duke of Monmouth was, and told him the great complaint my lord Shaftesbury had made, that he failed him. Says he, I think he is mad; I was so far from giving him any encouragement, that I did tell him from the beginning, and so did my lord Russell, there was nothing to be done by us in the country at that time. I did not then own that I had seen my lord, but spake as if this were brought me by a third person, because he had not given me liberty to tell them where his lodging was. Says I, My lord, I shall be able to give a better account of this in a day or two: Shall I convey it to my lord, that you are willing to give a meeting? Yes, says he, with all my heart. This was the 2nd, 3rd, or 4th of Oct.

I came to town on Saturday, and was carried to him on Monday; and I suppose this was Tuesday the 2nd of October. On Wednesday I think I went to him again (but it is not very material) and told him

I had been with the duke of Monmouth and given him a punctual account of what I had from him; and the duke did absolutely disown any such thing, and told me, he never did give him any encouragement to proceed that way, because the countries were not in a disposition for action, nor could be put in readiness at that time. Says my lord Shaftesbury, It is false: they are afraid to own it. And, says he, I have reason to believe, there is some artificial bargain between his father and him, to save one another: for when I have brought him to action, I could never get him to put on, and therefore I suspect him: and, says he, several honest men in the city have puzzled me, in asking how the duke of Monmouth lived: says he, They puzzled me, and I could not answer the question; for I know he must have his living from the King; and says he, we have different prospects; we are for a Commonwealth and he hath no other design but his own personal interest, and that will not go down with my people now (so he called them), they are all for a commonwealth: and then, says he, It is to no purpose for me to see him; it will but widen the breach, and I dare not trust him to come hither. Says I, My lord, that's a good one indeed! dare not you trust him, and yet do you send me to him on this errand? Nay, says he, it is because we have had some misunderstanding of late; but I believe he is true enough to the interest. Says I, It is a great unhappiness to take this time to fall out, and I think it is so great a design, that it ought to be undertaken with the greatest strength and coalition in the kingdom. Says he, My friends are now gone so far, that they can't pull their foot back again without going further; for, says he, it hath been

communicated to so many that it is impossible to keep it from taking air, and it must go on. Says he, We are not so unprovided as you think for; there are so many men, that you will find as brisk men as any in England. Besides we are to have 1000 or 1500 horse, that are to be drawn by insensible parties into town, that when the insurrection is, shall be able to scour the streets and hinder them from forming their forces against us. My lord, after great inlargement upon this head, and heads of the like nature, I told him I would not leave him thus, and that nothing should satisfy me, but an interview between him and the lords. No, I could not obtain it: but if I would go and tell them what a forwardness he was in, and that, if they would do themselves right, by putting themselves upon correspondent action in their respective places, and where their interest lay, well; otherwise he would go away without them: So I went again to the Duke of Monmouth, I spake to him only (I never spake to my lord Russell then, only we were together, but I had never come to any close conjunction of counsels in my life with him at that time). Says I to the duke, This man is mad, and his madness will prove fatal to us all; he hath been in a fright by being in the tower, and carries those fears about him that cloud his understanding. I think his judgment hath deserted him, when he goes about with those strange sanguine hopes that I can't see what should support him in the ground of them.

Therefore says I, Pray will you give him a meeting? God-so says the duke, with all my heart, and I desire nothing more. Now I told him, I had been with my lord Shaftesbury, with other inlargements that I need not trouble your lordship with; well, says he, pray

go to him, and try if it be possible to get a meeting; so I went to him and told him; Says I, This is a great unhappiness and it seems to be a great absurdity, that you are so forward to act alone in such a thing as this. Pray, says I, without any more to do, since you have this confidence to send for me, let me prevail with you to meet them, and give them an interview, or else you and I must break. I will no longer hold any correspondence, unless it be so. Says he, I tell you they will betray me. In short he did with much importunity yield that he would come out the next night in a disguise. By this time it was Saturday, I take it to be the 6th of Oct.: an almanac will settle that: so the next night being Sunday and the shops shut, he would come out in a concealment, be carried in a coach, and brought to his own house, which he thought then was safest. I came and gave the duke of Monmouth an account of it; the duke I suppose conveyed the same understanding to my lord Russell; and I suppose both would have been there accordingly, to have given the meeting: but next morning I found colonel Rumsey had left a note at my house, that the meeting could not be that day. Then I went to the duke of Monmouth and he had had the account before, that my lord Shaftesbury did apprehend himself to be in some danger in that house, and that the apprehension had occasioned him to remove; but we should be sure to hear from him in two or three days. We took it as a waiver, and thought he did from thence intend to abscond himself from us, and it proved so to me, for from that time I never saw him. But captain Walcot came to me, and told me, that he was withdrawn, but it was for fear his lodging might be discovered, but he did not doubt but in a

week he would let me know where his lodging was: but told me within such a time, which I think was eight or ten days, there would be a rising; and I told the duke of Monmouth and I believe he told my lord Russell; and we believed his frenzy was now grown to that height, that he would rise immediately and put his design into execution: so we endeavoured to prevent it, upon which my lord Russell (I was told) and the duke of Monmouth, did force their way to my lord Shaftesbury's and did persuade him to put off the day of his rendezvous. I had not this from my lord Russell, for I had not spoke a word to him: but the duke told me my lord Russell had been with him (I had indeed an intimation, that he had been with him but the duke told me, says he, I have not been with him, but my lord Russell was, having been conveyed by colonel Rumsey). After this day was put off, it seems it was put off with this condition, that those lords and divers others should be in a readiness to raise the country about that day fortnight, or thereabouts; for there was not above a fortnight's time given: and, says the duke of Monmouth, we have put it off but now we must be in action, for there is no holding it off any longer. And says he, I have been at Wapping all night, and I never saw a company of bolder and brisker fellows in my life; and says he, I have been round the Tower and seen the avenues of it; and I do not think it will be hard, in a little time, to possess ourselves of it; but says he, they are in the wrong way, yet we are engaged to be ready for them in a fortnight, and therefore, says he, now we must apply ourselves to it as well as we can. And thereupon I believe they did send into the country and the duke of Monmouth told me he spake

to Mr. Trenchard, who was to take particular care of Somersetshire, with this circumstance; Says he, I thought Mr. Trenchard had been a brisker fellow; for when I told him of it, he looked so pale, I thought he would have swooned, when I brought him to the brink of action; and said, I pray go and do what you can among your acquaintance; and truly I thought it would have come then to action. But I went the next day to him, and he said it was impossible, they could not get the gentlemen of the country to stir yet.

LORD RUSSELL—My lord, I think I have very hard measure, here is a great deal of evidence by hearsay.

LORD CHIEF-JUSTICE—This is nothing against you, I declare it to the jury.

ATTORNEY-GENERAL—If you please, my lord, go on in the method of time. This is nothing against you, but it's coming to you, if your lordship will have patience, I assure you.

LORD HOWARD—This is just in the order it was done. When this was put off, then they were in a great hurry; and Captain Walcot had been several times with me, and discoursed of it. But upon this disappointment they said, it should be the dishonour of the lords, that they were backward to perform their parts; but still they were resolved to go on. And this had carried it to the latter end of October. About the 17th or 18th captain Walcot came to me, and told me, now they were resolved positively to rise, and did believe that a smart party might perhaps meet with some great men.[1] Thereupon I told the duke of it; I met him in the street and went out of my own

[1] The following passages seem to give a true account of the measure of the complicity of Russell and his friends with the Rye House Plot.

coach into his, and told him there was some dark intimation, as if there might be some attempt upon the king's person; with that he struck his breast with a great emotion of spirit, and said, God-so, kill the king! I will never suffer that. Then he went to the play-house to find sir Thomas Armstrong and send him up and down the city to put it off, as they did formerly; and it was done with that success, that we were all quieted in our minds, that at that time nothing would be done: but upon the day the king came from Newmarket, we dined together; the duke of Monmouth was one, and there we had a notion conveyed among us, that some bold action should be done that day; which comparing it with the king's coming, we concluded it was designed upon the king. And I remember my lord Grey, says he, By God, if they do attempt any such thing, it can't fail. We were in great anxiety of mind, till we heard the king's coach was come in, and sir Thomas Armstrong not being there, we apprehended that he was to be one of the party (for he was not there). This failing, it was then next determined (which was the last alarum and news I had of it), to be done upon the 17th of November, the anniversary of queen Elizabeth; and I remember it by this remark I made myself, that I feared it had been discovered, because I saw a proclamation a little before forbidding public bonfires without leave of my lord mayor. It made some impressions upon me that I thought they had got an intimation of our intention, and had therefore forbid that meeting. This therefore of the 17th of November being also disappointed, and my lord Shaftesbury, being told things were not ripe, in the country, took shipping and got away: and from that time I heard

no more of him till I heard he was dead. Now, Sir, after this, we all began to lie under the same sense and apprehensions that my lord Shaftesbury did, that we had gone so far, and communicated it to so many, that it was unsafe to make a retreat; and this being considered, it was also considered, that so great an affair as that was, consisting of such infinite particulars, to be managed with so much fineness, and to have so many parts, it would be necessary, that there should be some general council, that should take upon them the care of the whole. Upon these thoughts we resolved to erect a little Cabal among ourselves, which did consist of six persons; and the persons were the duke of Monmouth, my lord of Essex, my lord Russell, Mr. Hambden junr., Algernone Sidney, and myself.

ATTORNEY-GENERAL—About what time was this, when you settled this council?

LORD HOWARD—It would have been proper for me in the next place to tell you that, and I was coming to it. This was about the middle of Jan. last (as near as I can remember); for about that time we did meet at Mr. Hambden's house.

ATTORNEY-GENERAL—Name those that met.

LORD HOWARD—All the persons I named before; that was the duke of Monmouth, my lord of Essex, my lord Russell, col. Sidney, Mr. Hambden junr., and myself; when we met there, it was presently agreed what their proper province was, which was to have a care of the whole; and therefore it was necessary some general things should fall under our care and conduct which could not possibly be conducted by individual persons. The things that did principally challenge this care, we thought were these: Whether the insurrection was most proper

to be begun in London, or in the country, or both at one instant. This stood upon several different reasons: It was said in the country; and I remember the Duke of Monmouth insisted upon it, that it was impossible to oppose a formed, well-methodized and governed force, with a rabble hastily got together; and therefore whatever number could be gathered in the city, would be suppressed quickly, before they could form themselves: therefore it would be better to begin it at such a distance from the town, where they might have an opportunity of forming themselves, and would not be subject to the like panic fear, as in the town, where half an hour would convey the news to those forces that in another half hour would be ready to suppress them.

It was further suggested that if the meeting was remote from London, the King must either give an opportunity for a rising there by withdrawing troops, or else give the insurgents time to gather head. Other questions discussed were what counties and towns were the fittest for action, what arms were necessary, how the £20,000 or £30,000 which the Duke of Monmouth considered necessary for the rising were to be raised; lastly and chiefly how to 'order it, as to draw Scotland into a consent with us.' Another meeting was held ten days afterwards at Lord Russell's, when the same persons were present. It was then decided to send messengers to Lord Argyle 'to settle an understanding with him, and others to invite to England persons' that

were judged most able to understand the state of Scotland, and give an account of it. Aaron Smith[1] was accordingly sent to Sir John Cochram,[2] Lord Melvile,[3] and Sir —— Campbell, and received sixty guineas from Algernon Sidney for his expenses. It was agreed that the conspirators should not meet together again till Aaron Smith's return. His absence for a month caused some apprehensions; 'but if his letters had miscarried, it could have done no great hurt, for it carried only a kind of cant in it;

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[1] Aaron Smith is first heard of as an obscure plotter in association with Oates and Speke. He was prosecuted in 1682 for supplying seditious papers to Colledge, and sentenced to fine and imprisonment. He managed to escape, however, before sentence was pronounced, and was arrested in connection with the present trial, when, as nothing could be proved against him, he was sentenced for his previous offence. After the Revolution he was appointed solicitor to the Treasury; but failing to give a good account of various prosecutions which he set on foot, he was dismissed in 1697.

[2] Sir John Cochram or Cochrane was the second son of William Cochrane, created Earl of Dundonald in 1689. He escaped to Holland at the time of Russell's trial, took part in Argyle's insurrection in 1685, turned approver, and farmed the poll tax after the Revolution, but was imprisoned in 1695 on failing to produce proper accounts.

[3] George Melville was the fourth baron and the first Earl of Melville. He supported the Royalist cause in Scotland, and tried to induce a settlement with the Covenanters before the battle of Bothwell Bridge. He escaped from England after the discovery of the Rye House Plot, and appeared at the Court of the Prince of Orange. After the Revolution he held high offices in Scotland till the accession of Anne, when he was dismissed. He died in 1707.

it was under the disguise of a plantation in Carolina.'

ATTORNEY-GENERAL—You are sure my lord Russell was there?

LORD HOWARD—Yes, sir; I wish I could say he was not.

ATTORNEY-GENERAL—Did he sit there as a cypher? What did my lord say?

LORD HOWARD—Every one knows my lord Russell is a person of great judgment, and not very lavish in discourse.

SERJEANT JEFFREYS—But he did consent?

LORD HOWARD—We did not put it to the vote, but it went without contradiction, and I took it that all there gave their consent.

SOLICITOR-GENERAL—The raising of money you speak of, was that put into in any way?

LORD HOWARD—No, but every man was to put themselves upon thinking of such a way, that money might be collected without administering jealousy.

ATTORNEY-GENERAL—Were there no persons to undertake for a fund?

LORD HOWARD—No, I think not. However it was but opinion, the thing that was said was jocosely, rather than anything else, that my lord of Essex had dealing in money, and therefore he was thought the most proper person to take care of those things; but this was said rather by way of mirth, than otherwise.

Howard then withdrew to Essex to see after some private affairs; on returning to town he heard that Smith had returned with Sir John Cochram but did not see them. He then went

to Bath and had nothing more to do with the conspiracy.

Lord Chief-Justice—My lord Russell, now if your lordship pleases, is the time for you to ask him any questions.

Lord Russell—The most he hath said of me, my lord, is only hearsay; the two times we met, it was upon no formed design, only to talk of news, and talk of things in general.

Lord Chief-Justice—But I will tell you what it is he testifies, that comes nearest your lordship, that so you may consider of it, if you will ask any questions. He says after my lord Shaftesbury went off (all before is but inducement, as to anything that concerns your lordship, and does not particularly touch you; after his going away he says) the party concerned with my lord Shaftesbury did think fit to make choice of six persons to carry on the design of an insurrection or rising, as he calls it, in the kingdom; and that to that purpose, choice was made of the Duke of Monmouth, my lord of Essex, your lordship, my lord Howard, colonel Sidney, and Mr. Hambden.

Lord Russell — Pray my lord, not to interrupt you, by what party (I know no party) were they chosen?

Lord Howard—It is very true, we were not chosen by community, but did erect ourselves by mutual agreement, one with another, into this society.

Lord Russell—We were people that did meet very often.

Lord Chief-Justice—Will your lordship please to have any other questions asked of my lord Howard?

LORD RUSSELL—He says it was a formed design, when we met about no such thing.

LORD CHIEF-JUSTICE—He says that you did consult among yourselves, about the raising of men, and where the rising should be first, whether in the city of London, or in more foreign parts, that you had several debates concerning it; he does make mention of some of the duke of Monmouth's arguments for its being formed in places from the city; he says you did all agree, not to do anything further in it, till you had considered how to raise money and arms: and to engage the kingdom of Scotland in this business with you, that it was agreed among you that a messenger should be sent into the kingdom of Scotland. Thus far he goes upon his own knowledge, as he saith; what he says after, of sending a messenger, is by report only.

ATTORNEY-GENERAL—I beg your pardon, my lord.

LORD CHIEF-JUSTICE—It is so, that which he heard concerning the sending of Aaron Smith. * *

ATTORNEY-GENERAL—Will you ask him any questions?

LORD RUSSELL—We met, but there was no debate of any such thing, nor putting anything in method. But my lord Howard is a man that hath a voluble tongue, talks very well, and is full of discourse, and we were delighted to hear him.

ATTORNEY-GENERAL—I think your lordship did mention the Campbells?

LORD HOWARD—I did stammer it out, but not without a parenthesis, it was a person of the alliance, and I thought of the name of the Argyles.

Atterbury was called, and swore that Sir

Hugh Campbell was in his custody; was captured 'making his escape out of a woodmonger's house, both he and his son'; he owned that he had been in London four days, and that he and his son and Bailey came to town together.

West[1] *was then called and sworn.*

ATTORNEY-GENERAL—That which I call you to, is to know whether or no, in your managery of this plot, you understand any of the lords were concerned, and which.

MR. WEST—My lord, as to my lord Russell, I never had any conversation with him at all, but that I have heard this, that in the insurrection in November, Mr. Ferguson and colonel Rumsey did tell me that my lord Russell intended to go down and take his post in the West, when Mr. Trenchard had failed them.

LORD CHIEF-JUSTICE—What is this?

ATTORNEY-GENERAL—We have proved my lord privy to the consults; now we go about to prove the under-actors did know it.

WEST—They always said my lord Russell was the man they most depended upon, because he was a person looked upon as of great sobriety.

LORD RUSSELL—Can I hinder people from making use of my name? To have this brought to influence

[1] West was a barrister at whose chambers in the Temple Rumsey, Ferguson, and other plotters used to meet, and it was alleged that the Rye House Plot was proposed: said by Burnet to have been 'a witty and active man, full of talk, and believed to be a determined atheist.'

the gentlemen of the jury, and inflame them against me, is hard.

LORD CHIEF-JUSTICE—As to this, the giving evidence by hearsay will not be evidence; what colonel Rumsey, or Mr Ferguson told Mr. West, is no evidence.

ATTORNEY-GENERAL—It is not evidence to convict a man, if there were not plain evidence before; but it plainly confirms what the other swears: but I think we need no more.

JEFFREYS—We have evidence without it, and will not use anything of garniture; we will leave it as it is, we won't trouble your lordship any further. I think, Mr. Attorney, we have done with our evidence.

The Lord Chief-Justice then recapitulated the evidence given against Lord Russell, dwelling particularly on the traitorous character of Rumsey's message, Russell's privity to Trenchard's rising, the alleged written declaration, and the consultations as to the best method of effecting a rising, and finally called on Lord Russell to make his defence.

LORD RUSSELL—My lord, I cannot but think myself mighty unfortunate, to stand here charged with so high and heinous a crime, and that intricated and intermixed with the treasons and horrid practices and speeches of other people, the king's counsel taking all advantages, and improving and heightening things against me. I am no lawyer, a very unready speaker, and altogether a stranger to things of this nature, and alone, and without counsel. Truly, my

lord, I am very sensible, I am not so provided to make my just defence, as otherwise I should do. But, my lord, you are equal, and the gentlemen of the jury, I think, are men of consciences; they are strangers to me, and I hope they value innocent blood, and will consider the witnesses that swear against me, swear to save their own lives; for howsoever legal witnesses they may be accounted, they can't be credible. And for col. Rumsey, who it is notoriously known hath been so highly obliged by the king, and the duke, for him to be capable of such a design of murdering the king, I think nobody will wonder, if to save his own life, he will endeavour to take away mine; neither does he swear enough to do it; and then if he did, the time by the 13th of this king, is elapsed, it must be as I understand by the law, prosecuted within six months; and by the 25 Edw. III. a design or levying war is no treason, unless by some overt-act it appear.[1] And, my lord, I desire to know, what statute I am to be tried upon; for generals, I think, are not to be gone upon in these cases.

The *Attorney-General* replies that they are proceeding under the Statute of 25 Edward III.; that he does not contend that a design to levy war is treason, but to prepare forces to fight against the King is a design within the Statute to kill the King; 'to design to depose the King, to imprison the King, to raise the subjects

[1] As to what is treason under 25 Edward III., see *post*, p. 36. Under 13 Car. II. c. 1 it is treason, *inter alia*, to devise the deposition of the King; but the prosecution must be within six months of the commission of the offence,

against the King, these have been settled by several resolutions to be within that Statute, and evidences of a design to kill the King.'[1] A man cannot be convicted of treason by one witness only, but several witnesses to several acts which manifest the same treason are sufficient.

JEFFREYS—If my lord will call his witnesses——

LORD RUSSELL—This is tacking of two treasons together; here is one in November by one witness, and then you bring in another with a discourse of my lord Howard, and he says the discourse passed for pleasure.

The Lord Chief-Justice and Jeffreys point out that it has been settled that the two witnesses required in treason may be witnesses to different acts, and that if Lord Russell admits the facts his counsel may be heard on the point of law.

LORD CHIEF-JUSTICE—My lord, to hear your counsel

[1] The question was, 'What is included in the expressions "Imagine the King's death" and "Levying war against the King"?' The Attorney-General was evidently placing a gloss on them, which was perhaps justified from a wider point of view than a merely legal one. However that may be, the same process was continued till it culminated in the theory of 'constructive treason,' according to which it was laid down in 1794 that a man who intended to depose the King compassed and imagined his death. The matter was eventually decided in 1795 by a statute which made such an intent and others of the same kind treason of themselves. See further Stephen's *History of Criminal Law*, vol. ii. pp. 243-263.

concerning this fact, that we cannot do, it was never done, nor will be done. If your lordship doubts whether this fact is treason or not, and desires your counsel may be heard to that, I will do it.

SOLICITOR-GENERAL—Will your lordship please to call any witness to the matter of fact?

LORD RUSSELL—It is very hard a man must lose his life upon hearsay. Colonel Rumsey says he brought a message which I will swear I never heard nor knew of. He does not say he spake to me, or I gave him any answer. Mr. Sheppard remembers no such thing; he was gone to and again. Here is but one witness, and seven months ago.

ATTORNEY-GENERAL—My lord, if there is anything that is law, you shall have it.

LORD RUSSELL—My lord, colonel Rumsey, the other day before the king [the information of Rumsey is signed by the Duke of Abermarle and Sir Leoline Jenkins, Secretary of State] could not say that I heard it, I was in the room, but I came in late, they had been there a good while; I did not stay above a quarter of an hour tasting sherry with Mr. Sheppard.

Here some of the judges desired that 25 Edw. III. c. 2 should be read, which was done, The material parts of it declare 'that whereas divers opinions have been before this time, in what case treason shall be said, and in what not . . . when a man doth compass or imagine the death of our lord the king . . . or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in

the realm, or elsewhere, and thereof be provable attainted of open deed by people of their condition,' it is treason. On this the point of law is re-discussed with the same result as before.

LORD RUSSELL—I do not know how to answer it. The points methinks must be quite otherwise, that there should be two witnesses to one thing at the same time.

ATTORNEY-GENERAL—Your lordship remembers, in my lord Stafford's case, there was but one witness to one act in England, and another to another in France.

LORD RUSSELL—It was to the same point.

ATTORNEY-GENERAL—To the general point, the lopping point.

LORD RUSSELL—I can prove I was out of town when one of these meetings was; but Mr. Sheppard cannot recollect the day, for I was out of town all that time. I never was but once at Mr. Sheppard's and there was nothing undertaken of viewing the guards while I was there. Col. Rumsey, can you swear positively, that I heard the message, and gave any answer to it?

LORD CHIEF-JUSTICE (to Col. Rumsey)—Sir, did my lord Russell hear you when you delivered the message to the company? Were they at the table, or where were they?

COLONEL RUMSEY—When I came in they were standing at the fireside; but they all came from the fireside to hear what I said.

LORD RUSSELL—Col. Rumsey was there when I came in.

COLONEL RUMSEY—No, my lord. The duke of Monmouth and my lord Russell went away together; and my lord Grey, and sir Thomas Armstrong.

LORD RUSSELL—The duke of Monmouth and I came together, and you were standing at the chimney when I came in; you were there before me. My lord Howard hath made a long narrative here of what he knew. I do not know when he made it, or when he did recollect anything; 'tis but very lately, that he did declare and protest to several people, that he knew nothing against me, nor of any Plot I could in the least be questioned for.

LORD CHIEF-JUSTICE—If you will have any witnesses called to that, you shall, my lord.

LORD RUSSELL—My lord Anglesey, and Mr. Edward Howard.

My lord Anglesey stood up.

LORD CHIEF-JUSTICE—My lord Russell, what do you ask my lord Anglesey?

LORD RUSSELL—To declare what my lord Howard told him about me, since I was confined.

LORD ANGLESEY—My lord, I chanced to be in town the last week; and hearing my lord of Bedford was in some distress and trouble concerning the affliction of his son, I went to give him a visit, being my old acquaintance, of some 53 years' standing, I believe; for my lord and I were bred together at Maudlin College in Oxon; I had not been there but a very little while, and was ready to go away again, after I had done the good office I came about; but my lord Howard came in, I don't know whether he be here.

LORD HOWARD—Yes, here I am to serve your lordship.

LORD ANGLESEY—And sat down on the other side of my lord of Bedford, and he began to comfort my lord; and the arguments he used for his comfort, were, my lord, you are happy in having a wise son;

and a worthy person, one that can never sure be in such a Plot as this, or suspected for it, and that may give your lordship reason to expect a very good issue concerning him. I know nothing against him, or any body else, of such a barbarous design, and therefore your lordship may be comforted in it. I did not hear this only from my lord Howard's mouth, but at my own home on the Monday after, for I used to go to Totteridge for fresh air; I went down on Saturday, this happened to be on Friday (my lord being here, I am glad, for he cannot forget this discourse); and when I came to town on Monday I understood tha my lord Howard upon that very Sunday had been church with my lady Chaworth. My lady has a chaplain it seems that preaches there and does the offices of the church; but my lady came to me in the evening. This I have from my lady——

Lord Chief-Justice—My lord, what you have from my lady is no kind of evidence at all.

Lord Anglesey—I don't know what my lord is, I am acquainted with none of the evidence, nor what hath been done; But my lady Chaworth came to me, and acquainted me there was some suspicion——

Jeffreys—I don't think it fit for me to interrupt a person of your honour, my lord, but your lordship knows in what place we stand here: What you can say of anything you heard of my lord Howard, we are willing to hear, but the other is not evidence. As the court will not let us offer hearsays, so neither must we that are for the king permit it.

Lord Anglesey—I have told you what happened in my hearing.

Mr. Howard was then called, and after describ

ing steps he took to prevail on Lord Howard to come over to the King's side, when 'I sometimes found my lord very forward and sometimes softened him'; and continuing—

Lord Chief-Justice—Pray apply yourself to the matter you are called for.

Mr. Howard—This it may be is to the matter, when you have heard me: for I think I know where I am, and what I am to say.

Lord Chief-Justice—We must desire you not to go on thus.

Mr. Howard—I must satisfy the world, as well as I can, as to myself, and my family, and pray do not interrupt me. After this, my lord, there never passed a day for almost——

Lord Chief-Justice—Pray speak to this matter.

Howard—Sir, I am coming to it.

Lord Chief-Justice—Pray, Sir, be directed by the Court.

Howard—Then now, sir, I will come to the thing. Upon this ground I had of my lord's kindness, I applied myself to my lord in this present issue, on the breaking out of this Plot. My lord, I thought certainly, as near as I could discern him (for he took it upon his honour, his faith, and as much as if he had taken an oath before a magistrate), that he knew nothing of any man concerned in this business, and particularly of my lord Russell, whom he vindicated with all the honour in the world. My lord, it is true, was afraid of his own person, and as a friend and a relation I concealed him in my own house, and I did not think it was for such a conspiracy, but I thought he was unwilling to go to the Tower for

nothing again ;[1] so that if my lord has the same soul on Monday, that he had on Sunday, this cannot be true, that he swears against my lord Russell.

LORD RUSSELL—Call Dr. Burnet.[2]

[1] He had been twice sent to the Tower: once in 1674 in consequence of the discovery of a secret correspondence with Holland; once in 1681 on a false charge by Edward Fitzharris of writing the *True Englishman*, a pamphlet advocating the deposition of Charles II. and the exclusion of the Duke of York, which was in fact written by Fitzharris, it is suggested with the purpose of imputing its authorship to the Whigs. It is no doubt the second of these occasions that is referred to.

[2] Burnet had at this time retired into private life, having lost the Court favour which he had gained at an earlier period. He had been an intimate friend of Stafford, and was living on terms of the closest intimacy with Essex and Russell at the time of their arrest. After Russell's execution he left the country, and eventually found his way to the Hague just before the Revolution, where he performed services for William and Mary requiring the utmost degree of confidence. He landed at Torbay with William, soon became Bishop of Salisbury, and until the end of William's life remained one of his most trusted councillors. He retained a position of great influence under Anne, and died in 1715. In relation to his evidence in this case, it is interesting to read in his history that Russell was privy to a plot for promoting a rebellion in the country and for bringing in the Scotch. He says further: 'Lord Russell desired that his counsel might be heard to this point of seizing the guards; but that was denied unless he would confess the fact, and he would not do that, because as the witnesses had sworn it, it was false. He once intended to have related the whole fact just as it was; but his counsel advised him against it'; in fact Russell admitted that he knew of a traitorous plot, and did not reveal it. 'He was a man of so much candour that he spoke little as to the fact; for since he was advised not to tell the whole truth, he could not speak against that which he knew to be true, though in

LORD RUSSELL—Pray, Dr. Burnet, did you hear anything from my lord Howard, since the Plot was discovered, concerning me?

DR. BURNET—My lord Howard was with me the night after the Plot broke out, and he did then, as he had done before, with hands and eyes lifted up to heaven, say he knew nothing of any Plot, nor believed any; and treated it with scorn and contempt.

LORD HOWARD—My lord, may I speak for myself?

JEFFREYS—No, no, my lord, we don't call you.

LORD CHIEF-JUSTICE—Will you please to have any other witnesses called?

LORD RUSSELL—There are some persons of quality that I have been very well acquainted and conversed with. I desire to know of them, if there was anything in my former carriage to make them think me like to be guilty of this? My lord Cavendish.

LORD CAVENDISH—I had the honour to be acquainted with my lord Russell a long time. I always thought him a man of great honour, and too prudent and wary a man to be concerned in so vile and desperate a design as this, and from which he would receive so little advantage; I can say nothing more, but that two or three days since the discovery of this plot upon discourse about Col. Rumsey my lord Russell did express something, as if he had a very ill opinion of the man, and therefore it is not likely he would entrust him with such a secret.

LORD RUSSELL—Dr. Tillotson.[1]

some particulars it had been carried beyond the truth.' See too *post*, p. 55.

[1] John Tillotson (1630-1694) was the son of a weaver of Sowerby. He entered Clare Hall in 1647, and became a a fellow of the same college in 1651. He received an early

LORD CHIEF-JUSTICE—What questions would you ask him, my lord?

LORD RUSSELL—He and I happened to be very conversant. To know whether he did ever find anything tending to this in my discourse.

LORD CHIEF-JUSTICE—My lord calls you as to his life, and conversation and reputation.

DR. TILLOTSON—My lord, I have been many years last past acquainted with my lord Russell, I always judged him a person of great virtue and integrity, and by all the conversation and discourse I ever had with him, I always took him to be a person very far from any such wicked design he stands charged with.

LORD RUSSELL—Dr. Burnet, if you please to give some account of my conversation.

DR. BURNET—My lord, I have had the honour to

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bias against Puritanism from Chillingworth's *Religion of Protestants*, and his intercourse with Cudworth and others at Cambridge. He became tutor to the son of Prideaux, Cromwell's Attorney-General in 1656; he was present at the Savoy Conference in 1661, and remained identified with the Puritans till the passing of the Act of Uniformity in 1662; afterwards he became curate of Cheshunt in Hertfordshire and rector of Keddington in Suffolk. In 1664 he was known as a celebrated preacher, and was appointed preacher in Lincoln's Inn. In 1678 and 1680 he preached sermons to the House of Commons and the King respectively, exhorting the former to legislation against Popery, and pointing out to the latter that whilst Catholics should be tolerated, they should not be allowed to proselytise. He attended Russell on the scaffold, and with Burnet was summoned before the Council on a suspicion of having helped to compose Russell's published speech. He acquired great influence after the Revolution; and having exercised the archiepiscopal jurisdiction of the province of Canterbury during Sancroft's suspension, became himself archbishop in 1691.

be known to my lord Russell several years, and he hath declared himself with much confidence to me, and he always upon all occasions expressed himself against all risings; and when he spoke of some people would provoke to it, he expressed himself so determined against that matter that I think no man could do more.

Dr. Thomas Cox was then called and said that having seen a great deal of Lord Russell during the six weeks 'before this plot came out,' he had always found him against all kind of risings; he expressed distrust of Rumsey.

He said, for my lord Howard, he was a man of excellent parts, of luxuriant parts, but he had the luck not to be much trusted by any party.

The *Duke of Somerset* spoke shortly as to Lord Russell's honour, loyalty, and justice.

FOREMAN OF THE JURY—The gentlemen of the jury desire to ask my lord Howard something upon the point my lord Anglesey testified, and to know what answer he makes to lord Anglesey.

LORD CHIEF-BARON—My lord, what say you to it, that you told his father that he was a discreet man, and he needed not to fear his engagement in any such thing?

LORD HOWARD—My lord, if I took it right my lord Anglesey's testimony did branch itself into two parts, one of his own knowledge, and the other by hearsay; as to what he said of his own knowledge, when I waited upon my lord of Bedford, and endeavoured to comfort him concerning his son, I believe I said the

words my lord Anglesby has given an account of, as near as I can remember, that I looked upon his lordship as a man of that honour, that I hoped he might be secure, that he had not entangled himself in anything of that nature. My lord, I can hardly be provoked to make my own defence, lest this noble lord should suffer, so willing I am to serve my lord, who knows I cannot want affection for him. My lord, I do confess I did say it; for your lordship well knows under what circumstances we were: I was at that time to outface the thing, both for myself and my party, and I did not intend to come into this place, and act this part. God knows how it is brought upon me, and with what unwillingness I do sustain it; but my duty to God, the king, and my country requires it; but I must confess I am very sorry to carry it on thus far. My lord, I do confess I did say so, and if I had been to visit my lord Pemberton, I should have said so. There is none of those that know my lord Russell, but would speak of my lord Russell, from those topics of honour, modesty and integrity, his whole life deserves it. And I must confess that I did frequently say, there was nothing of truth in this, and I wish this may be for my lord's advantage. My lord, will you spare me one thing more, because that leans hard upon my reputation; and if the jury believe that I ought not to be believed, for I do think the religion of an oath is not tied to a place, but receives its obligation from the appeal we therein make to God, and, I think, if I called God and angels to witness to a falsehood, I ought not to be believed now; but I will tell you as to that; your lordship knows that every man that was committed, was committed for a design of murdering the king;

now I did lay hold on that part, for I was to carry my knife close between the paring and the apple; and I did say that if I were an enemy to my lord Russell, and to the Duke of Monmouth, and were called to be a witness, I must have declared in the presence of God and man, that I did not believe either of them had any design to murder the king. I have said this, because I would not walk under the character of a person that would be perjured at the expense of so noble a person's life, and my own soul.

Lord Clifford, Mr. Suton Gore, Mr. Spencer, and *Dr. Fitz-Williams* then all gave evidence as to Lord Russell's character in general terms.

Lord Chief-Justice—My lord, does your lordship call any more witnesses?

Lord Russell—No, my lord, I will be very short. I shall declare to your lordship, that I am one that have always had a heart sincerely loyal and affectionate to the king, and the government the best government in the world. I pray as sincerely for the king's happy and long life as any man alive; and for me to go about to raise a rebellion, which I looked upon as so wicked and unpracticable, is unlikely. Besides, if I had been inclined to it, by all the observation I made in the country, there was no tendency to it. What some hot-headed people have done there, is another thing. A rebellion cannot be made now as it has been in former times; we have few great men. I was always for the government, I never desired anything to be redressed, but in a parliamentary and legal way, I have always been against innovations and all irregularities whatsoever; and shall be as long as

I live, whether it be sooner or later. Gentlemen, I am now in your hands eternally, my honour, my life, and all; and I hope the heats and animosities that are amongst you will not so bias you, as to make you in the least inclined to find an innocent man guilty. I call to witness heaven and earth, I never had a design against the king's life, in my life, nor never shall have. I think there is nothing proved against me at all. I am in your hands. God direct you.

The *Solicitor-General* then proceeds to sum up the case against Lord Russell. The treason alleged against the prisoner is conspiring the death of the King; the overt act proving the conspiracy is the assembling in council to raise arms against the King and raise a rebellion here. Rumsey was sent by Shaftesbury to Sheppard's house to ask for news of Trenchard's rising at Taunton; the message was delivered in Russell's presence and an answer was given as from them all that they were disappointed there, and were not ready to rise. Monmouth, Grey, and Armstrong went out to inspect the guards and reported that it was feasible to surprise them. Russell was present and discussed a rising with the rest; the rising was to be on the 19th of November. Sheppard speaks to Ferguson engaging his rooms on behalf of Monmouth; there was consequently a private meeting there which Russell attended. He confirms Rumsey as to the inspecting of the guards, and speaks to the reading of a paper, though he

does not say that Russell was there when it was read. Lord Howard 'gives you an account of many things, and many things that he tells you are by hearsay. But I cannot but observe to you that all this hearsay is confirmed by these two positive witnesses.' Shaftesbury told Howard of the disappointment he had met with from noble persons who would not join with him; Howard went from Shaftesbury to Monmouth to expostulate with him; 'and Monmouth said he had always told him (? Howard or Shaftesbury) he would not engage at that time.' This, says the Solicitor-General, is confirmed by Rumsey's account of the delivery of his message. Then follows the abandonment of the rising on the 19th of November in consequence of the proclamation forbidding the usual rejoicings on that occasion, and Shaftesbury's departure, leading to the formation of the committee of six, of whom Lord Russell was one, and who at one meeting discussed the proper place for the rising and at another how best to obtain assistance from Scotland. Lord Russell states that he only came to Sheppard's house by accident about some other business, but he came with Monmouth, and Monmouth came by appointment. Surely this designed and secret meeting must have been intended for the purposes for which it was used. Lord Russell objects that this evidence proves no more than a conspiracy

to levy war, which is not treason within 25 Edw. III., and though it is treason within 13 Car. II., that statute does not apply because the prosecution has not taken place within six months of the offence. But the case is one of high treason under 25 Edw. III., because 'to conspire to levy war, is an overt-act to testify the design of the death of the King'; as to which see Lord Cobham's case, 1 Jac.[1] A conspiracy to levy war against the king's person tends to seizing the King, which has always been taken to be treason. It may be different in the case of a conspiracy to levy war by such an act as overthrowing all inclosures (which is levying war), which by construction only is against the King, but such cases are to be distinguished from the levying of war against the King himself; see the case of Dr. Story. As was seen in Plunket's[2]

[1] Henry Brooke, the eighth Lord Cobham, after losing Court favour on the death of Elizabeth, was accused in 1603 of plotting with Aremberg, the Spanish ambassador, to place Arabella Stuart on the throne, and to kill the King. His evidence contributed largely to the conviction of Sir Walter Raleigh of the same treason, and he was tried and convicted the next day. He was kept in prison till 1617, when he was allowed to go to Bath on condition that he returned to prison; but he was struck by paralysis on his way back and died in 1619. See vol. i. pp. 19-57.

[2] Oliver Plunket (1629-1681) was Roman Catholic bishop of Armagh and titular primate of Ireland. He attained these positions in 1669; in 1674 he went into hiding when the position of the Catholics in England drew attention to their presence in Ireland. He was arrested on a charge of com-

case, to invite a foreign invasion is to conspire the death of the King. Coke, in the passage before that relied on by Lord Russell, admits that this is the law. When Coke says that to levy war is not an overt act for compassing the death of the King (that is, is not evidence of such an intention), Sir Henry Vane's case shows he is wrong.

As to the killing of the King, I am apt to think that was below the honour of the prisoner at the bar . . . but this is equal treason; if they designed only to bring the King into their power, till he had consented to such things as should be moved in Parliament, it is equally treason as if they had agreed directly to assassinate him.

Lord Howard, it is true, testified repeatedly to Lord Russell's innocence, but was not this the best way of concealing his own guilt? Surely Dr. Burnet would look on himself as the last person to whom conspirators would confess their crimes.

Jeffreys followed, recapitulating a few of the facts, but adding nothing to the Solicitor-General's argument.

LORD CHIEF-JUSTICE—Gentlemen of the jury, the prisoner at the bar stands indicted before you of

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plicity with the Popish Plot in 1678, and eventually tried in the King's Bench for treason in 1681 by Sir Francis Pemberton, when the law was laid down as stated above. He was convicted, hung, beheaded and quartered.

high treason in compassing and designing the death of the king, and declaring of it by overt-acts endeavouring to raise insurrections, and popular commotions, in the kingdom here. To this he hath pleaded, Not Guilty. You have heard the evidence that hath been against him; it hath been at large repeated by the king's counsel which will take off a great deal of my trouble in repeating it again. I know you cannot but take notice of it, and remember it, it having been stated twice by two of the king's counsel to you; 'tis long, and you see what the parties here have proved. There is first of all Col. Rumsey, he does attest a meeting at Mr. Sheppard's house, and you hear to what purpose he says it was; the message that he brought, and the return he had; it was to enquire concerning a rising at Taunton; and that he had in return to my lord Shaftesbury was, that Mr. Trenchard had failed them, and my lord must be contented; for it could not be that time. You hear that he does say, that they did design a rising; he saith there was a rising designed in November, I think he saith the seventeenth, upon the day of queen Elizabeth's birth.[1] You hear he does say there was at that meeting some discourse concerning inspecting the king's guards, and seeing how they kept themselves, and whether they might be surprised, and this he says was all in order to a rising. He says, that at this my lord Russell was present. Mr. Sheppard does say, that my lord Russell was there; that he came into this meeting with the duke of Monmouth and he did go away with the duke of Monmouth he believes. He

[1] Rumsey says the 19th, Howard the 17th. The 17th was the anniversary of the Queen's accession.

says there was some discourse of a rising or insurrection that was to be procured within the kingdom: but he does not tell you the particulars of any thing, he himself does not. My lord Howard afterwards does come and tell you of a great discourse he had with my lord Shaftesbury, in order to a rising in the city of London; and my lord Shaftesbury did value himself mightily upon 10,000 men he hoped to raise; and a great deal of discourse, he had with my lord Shaftesbury. This he does by way of inducement to what he says concerning my lord Russell.

The evidence against him is some consults that there were by six of them, who took upon them, as he says, to be a council for the management of the insurrection, that was to be procured in this kingdom. He instances in two that were for this purpose, the one of them at Mr. Hambden's house, the other at my lord Russell's house. And he tells you at these meetings, there was some discourse of providing treasure, and of providing arms; but they came to no result in these things. He tells you that there was a design to send for some of the kingdom of Scotland, that might join with them in this thing. And this is upon the matter, the substance of the evidence, that hath been at large declared to you by the king's counsel, and what you have heard. Now gentlemen, I must tell you some things it lies upon us to direct you in.

My lord excepts to these witnesses, because they are concerned, by their own shewing, in this design. If there were any, I did direct (some of you might hear me) yesterday, that that was no sufficient exception against a man's being an evidence in the case of treason, that he himself was concerned in it; they are the most proper persons to be evidence, none being

able to detect such counsels but them. You have heard my lord Russell's witnesses that he hath brought concerning them, and concerning his own integrity and course of life, how it has been sober and civil, with a great respect to religion, as these gentlemen do all testify. Now the question before you will be, 'Whether upon this whole matter you do beleive my lord Russell had any design upon the king's life, to destroy the king, or take away his life, for that is the material part here. It is used and given you (by the king's counsel) as an evidence of this, that he did conspire to raise an insurrection, and to cause a rising of the people, to make as it were a rebellion within the nation, and to surprise the king's guards, which, say they, can have no other end, but to seize and destroy the king; and 'tis a great evidence (if my lord Russell did design to seize the king's guards, and make an insurrection in the kingdom) of a design to surprise the king's person. It must be left to you upon the whole matter: you have not evidence in this case as there was in the other matter that was tried in the morning or yesterday,[1] against the conspirators to kill the king at the Rye. There was a direct evidence of a consult to kill the king, that is not given you in this case: This is an act of contriving rebellion, and an insurrection within the kingdom, and to seize his guards, which is urged an evidence, and surely is in itself an evidence, to seize and destroy the king.

Upon this whole matter, this is left to you. If you believe the prisoner at the bar to have conspired the

[1] Thomas Walcot and William Hone, tried for and convicted of participation in the Rye House Plot.

death of the king and in order to that, to have had these consults, that these witnesses speak of, then you must find him guilty of this treason that is laid to his charge.

Then the Court adjourned till four o'clock in the afternoon, when the Jury brought the said Lord Russell in guilty of the said High Treason.

On July 14th Lord Russell was brought up before the Recorder for sentence, and, demanding to have the indictment read, pleaded that no intention to kill the King had been proved. The Recorder, however, pointed out that the point had already been taken, and that he was bound by the verdict of the jury. He then condemned the prisoner in the usual way to be drawn, hanged, and quartered. This sentence was commuted to beheading, and was carried out on 21st July.

Lord Russell was accompanied from Newgate to Lincoln's Inn Fields, where the execution took place, by Tillotson and Burnet. He spoke a few words on the scaffold, expressing his affection for the Protestant religion, and denying knowledge of any plot against the King's life, or the government. He left a paper of considerable interest from a general point of view justifying his action in relation to the Popish Plot and the Exclusion Bill. As to his trial, he asserts that he never saw Sheppard but once, and then there was no undertaking as to seizing the guards and no one appointed to

view them. It may have been discoursed of then and at other times, but he never consented to it, and once at Shaftesbury's he strongly protested against it. He had an intention to try some sherry when he went to Sheppard's; but when he was in town

the duke of Monmouth came to me and told me he was extremely glad I had come to town, for my lord Shaftesbury and some hot men would undo us all, if great care be not taken; and therefore for God's sake use your endeavours with your friends to prevent anything of this kind. He told me there would be company at Mr. Sheppard's that night, and desired me to be at home in the evening, and he would call me, which he did: And when I came into the room I saw Mr. Rumsey by the chimney, although he swears he came in after; and there were things said by some with much more heat than judgment, which I did sufficiently disapprove, and yet for these things I stand condemned. It is, I know, inferred from thence, and was pressed to me, that I was acquainted with these heats and ill designs, and did not discover them; but this is but misprision of treason at most. So I die innocent of the crime I stand condemned for, and I hope nobody will imagine, that so mean a thought could enter into me, as to go about to save myself by accusing others; the part that some have acted lately of that kind has not been such as to invite me to love life at such a rate. . . . I know I said but little at the trial, and I suppose it looks more like innocence than guilt. I was also advised not to confess matter of fact plainly, since that must certainly have brought me within the

guilt of misprision.[1] And being thus restrained from dealing frankly and openly, I chose rather to say little, than to depart from ingenuity, that by the grace of God I had carried along with me in the former parts of my life; so could easier be silent, and leave the whole matter to the conscience of the jury, than to make the last and solemnest part of my life so different from the course of it, as the using little tricks and evasions must have been.

Lord Russell's attainder was reversed by a private Act of 1 Will. and Mary on the ground that the jury were not properly returned, that his lawful challenges to them for want of freehold were refused, and that he was convicted 'by partial and unjust constructions of the law.'

[1] See *ante*, p. 42.

THE EARL OF WARWICK

VOL. II.

THE EARL OF WARWICK

MARCH 28, 1699. About eleven of the clock the Lords came from their own house into the court erected in Westminster hall, for the trials of Edward, earl of Warwick and Holland, and Charles lord Mohun,[1] in the manner following. The lord high

[1] Charles, fifth Baron Mohun (1675?-1712), was the eldest son of the fourth baron, who died from a wound received in a duel when his son was about two years old. He fought his first duel in 1692, breaking out of his lodgings, where he was confined in consequence of a quarrel over dice, for the purpose, with the assistance of the Earl of Warwick of the present case, the grandson of the Lord Holland of the Civil War. This encounter ended in both combatants being disarmed. Two days later he abetted in the murder of Mountfort, an actor. One Captain Hill was in love with Mrs. Bracegirdle, the famous actress, and supposed that he had cause to be jealous of the attentions she received from Mountfort, the equally eminent actor. Accordingly Hill and Mohun formed a plan (estimated to cost £50 in all) to carry off the lady as she came out of the theatre; and providing themselves with a coach-and-six and a body of soldiers set out on the enterprise. They missed Mrs. Bracegirdle at the theatre, but found her by chance coming out of a house in Drury Lane where she had supped. The attempt to carry her off in the coach failed, owing to the vigorous resistance made by her friends. Hill and Mohun, however, were allowed to escort her to her lodgings in Howard Street, where they saw her safely home. Mountfort lived in Norfolk Street, at the

steward's gentleman attendants, two and two. The clerks of the House of Lords, with two clerks of the crown in the Courts of Chancery and King's Bench. The masters of Chancery, two and two. Then the judges. The peers' eldest sons, and peers minors, two and two. Four serjeants at arms with their maces, two and two. The yeoman usher of the house. Then the peers, two and two, beginning with the youngest barons. Then four serjeants at arms with their

bottom of Howard Street; and, as he was passing down the latter some two hours later, he was accosted by Mohun in a more or less friendly way; but while they were talking together, he was attacked and killed by Hill, who did not give him time to draw his sword. Hill fled, but Mohun was tried by his peers in Westminster Hall, January 1692-93. The trial excited great interest partly owing to the youth of the prisoner, and on a question being raised as to the degree of complicity necessary to constitute his guilt, he was acquitted. A report of the trial will be found in *State Trials*, xii. 950. There are also some picturesque references to it in Chapter xix. of Macaulay's *History*. Mohun fought another duel in 1694, served for two years in Flanders, returned to England, and fought a duel with Captain Bingham in St. James's Park, which was interrupted by the sentries. The same year he was present at the death of Captain Hill, in the Rummer Tavern. The present case occurred in 1698, and seems to have closed his career as a rake. He was sent under Lord Macclesfield on a mission to present the Electress-Dowager Sophia with a copy of the Act of Succession, and he frequently took part in debates in the House of Lords. After Lord Macclesfield's death he became entangled in a long course of litigation with the Duke of Hamilton; and on their meeting in Master's Chambers, remarks passed between them which led to a duel, when both were killed. The Tories suggested that the Whigs had arranged the duel in order to get rid of Mohun because they were tired of him, and Hamilton, because they wanted to prevent his projected embassy to France.

maces. Then one of the heralds, attending in the room of Garter, who by reason of his infirmity, could not be present. And the gentleman usher of the Black Rod, carrying the white staff before the lord high steward. Then the lord chancellor, the lord high steward, of England, alone.

When the lords were seated on their proper benches, and the lord high steward on the wool-pack; the two clerks of the crown in the courts of Chancery and King's Bench, standing before the clerk's table with their faces towards the state;

The clerk of the crown in Chancery having his majesty's commission to the lord high steward in his hands, made three reverences towards the lord high steward, and the clerk of the crown in Chancery on his knees presented the commission to the lord high steward, who delivered it to the clerk of the crown in the King's bench (then likewise kneeling before his grace) in order to be opened and read; and then the two clerks of the crown making three reverences, went down to the table; and the clerk of the crown in the King's Bench commanded the serjeant at arms to make proclamation of silence; which he did in this manner.

SERJEANT-AT-ARMS—O yes, O yes, O yes, My lord high steward his grace does straitly charge and command all manner of persons here present, to keep silence, and hear the king's majesty's commission to his grace my lord high steward of England directed, openly read, upon pain of imprisonment.

Then the lord high steward[1] asked the peers

[1] John Lord Somers (1651-1716) was born at Whiteladies,

to be pleased to stand up uncovered, while the King's commission was read. And the peers stood up, uncovered, and the King's commission was read in Latin, by which it was set out that the Grand Jury of the County of Middlesex had found a true bill of murder against the Earl of Warwick and Lord Mohun, which the peers were commissioned to try. Proclamation that

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near Worcester, educated at Trinity College, Oxford, and called in 1676. He appeared as junior counsel in the trial of the Seven Bishops, at the instance of Pollexfen (see vol. i. p. 241), and took a conspicuous part in the settlement of the monarchy after the Revolution, being an influential member of the Committee which drafted the Declaration of Rights. He became Solicitor-General in 1689, and Attorney-General in 1692, in which capacity it is curious to notice that he conducted the prosecution of Lord Mohun for the murder of Mountfort (see *ante*, p. 60). He became William III.'s first Lord Keeper in 1692-3, and Lord Chancellor in 1697. During all this time he was one of William's most trusted advisers, and was consulted by him on the most confidential questions relating to foreign policy. He was also familiar with the leading literary and scientific men of his time, being responsible for Addison's pension, and receiving the dedication of the *Vale of a Tub* from Swift. He also conferred favours on Rymer and Madox. He resigned the Great Seal in 1700 after a motion for his perpetual exclusion from the presence of the King had been defeated by a small majority in the House of Commons; having already lost the King's confidence by the position he adopted in regard to William's propositions for a standing army, and attracted the hostility of the country partly by his opposition to the bill for the resumption of the grants of forfeited Irish estates. He played a conspicuous part in the reign of Queen Anne as the head of the Whig junto formed at the beginning of that reign, but never resumed office.

all persons there present should be uncovered, was then made, and the return of *certiorari*, bringing the indictment before the House of Lords, was read in Latin.

Order was then made that the judges might be covered, and the governor of the tower was ordered to produce the earl of Warwick; and he was brought to the bar by the deputy-governor, having the axe carried before him by the gentleman gaoler, who stood with it at the bar, on the right hand of the prisoner, turning the edge from him.

The lord high steward then informed the prisoner that he had been indicted of murder by the Grand Jury for the county of Middlesex, on which indictment he would now be tried; and proceeded—

Your lordship is called to answer this charge before the whole body of the house of peers as assembled in parliament. It is a great misfortune to be accused of so heinous an offence, and it is an addition to that misfortune, to be brought to answer as a criminal before such an assembly, in defence of your estate, your life, and honour. But it ought to be a support to your mind, sufficient to keep you from sinking under the weight of such an accusation, that you are to be tried before so noble, discerning, and equal judges, that nothing but your guilt can hurt you. No evidence will be received, but what is warranted by law; no weight will be laid upon that evidence, but what is agreeable to justice; no advantage will be taken of

your lordship's little experience in proceedings of this nature; nor will it turn to your prejudice, that you have not the assistance of counsel in your defence, as to the fact (which cannot be allowed by law), and their lordships have already assigned you counsel if any matter of law should arise.

After a little more to the same effect, the indictment was read, first in Latin, then in English, and the earl of Warwick pleaded Not Guilty.

The indictment was then opened by Serjeant Wright,[1] to the effect that the prisoner was accused of murdering Richard Coote on the 30th of October, by stabbing him, together with Lord Mohun, Richard French, Roger James, and George Dockwra.

[1] Sir Nathan Wright (1653-1721), born of an Essex family, was educated at Emmanuel College, and was called in 1677. He was junior counsel for the Crown in the trial of the Seven Bishops, and opened the pleadings. He became Serjeant in 1692. On the retirement of Lord Somers in 1700, a difficulty was found in providing a successor, and eventually the post of Lord Chancellor was offered to, and accepted by, Wright. He enjoyed no reputation, good or bad, as a judge, except that he was very slow, and generally considered unfit for the place. After holding office for five years he was dismissed on the accession to power by the Whigs in 1705. Speaking of his appointment as Lord Chancellor, Lord Campbell says, 'The occasional occurrence of such elevations seems wisely contrived by Providence to humble the vanity of those who succeed in public life, and to soften the mortification of those who fail.'

The Attorney-General[1] then opened the case, as follows:—

ATTORNEY-GENERAL—May it please your lordships, I am of counsel in this cause for the king against this noble lord, Edward earl of Warwick and Holland, the prisoner at the bar, who stands indicted by the grand jury of the County of Middlesex, has been arraigned, and is now to be tried before your lordships for the felonious killing and murdering of Mr. Coote, in the indictment named; the evidence to make good this charge against this noble lord, it comes to my turn to open to your lordships.

My lords, the case, as to the fact, according to my instructions, is this: Upon Saturday, the 29th of October last, at night, my lord of Warwick, my lord Mohun, Mr. French, Mr. Dockwra, and Mr. Coote, the unfortunate gentleman who was killed, met together at one Locket's who kept the Greyhound-tavern in the Strand, and there they staid till it was

[1] Thomas Lord Trevor (1659?-1730) was the son of a Secretary of State of Charles II. He was called in 1680, became a bencher in 1689, Solicitor-General in 1692, Attorney-General in 1695. He refused to succeed Lord Somers in 1700; but in 1701 succeeded Sir George Treby as Chief-Justice of the Common Pleas. He was re-appointed by Queen Anne, and was one of the twelve peers created by her in 1711 to create a majority in the House of Lords. He was removed from office in 1714 on the accession of George I.; but leaving the Tory party, which he had joined in Anne's reign, became Lord Privy Seal in 1726, and President of the Council in 1730, but died six weeks afterwards. He enjoyed a reputation as a good judge; but is chiefly remembered for his proper conduct of Crown prosecutions as Attorney-General after the Revolution.

very late; about twelve of the clock at night, or thereabouts, a messenger was sent by the company to fetch another gentleman, Mr. James; and Mr. James coming to them, in what condition your lordships will be told by the witnesses; about one of the clock in the morning, on Sunday, the 30th of October, they all came down out of the room where they had been so late, to the bar of the house, and there, as the witnesses will tell your lordships, swords were drawn, and the chairs were called for, and two chairs which were nearest at hand came, and two of the company went into those chairs; who they were, and what past at that time, the witnesses will tell your lordships; those that got into those chairs came out again, and more chairs were called for. But I must acquaint your lordships, that my lord Mohun, when the two gentlemen that went into the chairs ordered the chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no quarreling that night, and that he would send for the guards and secure them, and after this they came out of the chairs again; it will appear there were swords drawn amongst all of them, and some wounds given: more chairs being called for, and brought, this noble lord that is here at the bar, my lord of Warwick, my lord Mohun, and the other four gentlemen, went all into the chairs, and gave the chairmen directions, whither they should carry them, at leastwise the foremost had directions given them, and the rest were to follow them; it was a very dark night, but at last they came all to Leicester-square; and they were set down a little on this side the rails of the square, and when the chairmen had set them down they went away; but immediately some of

them heard my lord of Warwick calling for a chair again, who came towards the rails, and there they found two of the gentlemen, that had been carried in some of the other chairs, holding up Mr. Coote between them, and would have had the chairmen carried him away to a surgeon's, but they found he was dying, and so would not meddle with him; afterwards my lord of Warwick and Mr. French were carried by two of the chairs to Mr. Amy's, the surgeon at the Bagnio in Long-acre, where Mr. French being wounded, was taken care of particularly by the recommendation of my lord of Warwick, and the master of the house was called up, it being very late; Mr. Coote's sword was brought to that place, but by whom it was brought we cannot exactly say. While my lord of Warwick and captain French were there, and my lord of Warwick had given orders for the denying of himself, and forbid the opening of the door, there came the other two gentlemen, Mr. James and Mr. Dockwra, and upon their knocking at the door they were let in by my lord's order, after he had discovered who they were, looking through the wicket. Mr. James had his sword drawn, but it was broken. My lord of Warwick's hand was slightly wounded, and his sword bloody up to the hilt when he came in, as will be proved by the testimony of the servants in the House. There was a discourse between my lord, Mr. James and Mr. Dockwra, about going into the country; but before they went, the swords were all called for to be brought to them, and upon enquiry, there was no blood found upon Mr. French's sword, but a great deal upon my lord of Warwick's, of which great notice was taken at that time. Mr. Coote, who was killed, had received one wound in the

left side of his breast, half an inch wide, and five deep, near the collar bone; he had likewise another wound upon the left side of his body; both which your lordships will hear, in the judgment of the surgeon, were mortal wounds, and the evidence will declare the nature of them.

My lords, the evidence does chiefly consist of, and depend on circumstances, the fact being done in the night, and none but the parties concerned being present at it; we shall lay the evidence before your lordships, as it is, for your judgment, and call what witnesses we have on behalf of the king, against this noble peer the prisoner at the bar, and take up your lordships' time no further in opening; and we shall begin with Samuel Cawthorne; he is a drawer at the tavern where those lords and gentlemen were together, and he will give you an account of the time they came there, how long they staid, what happened in the house during their being there, and what time they went away.

LORD HIGH STEWARD—Give him his oath. (Which the clerk did.)

ATTORNEY-GENERAL—My lords, I doubt the witness is so far off, that it will be difficult for him to hear the questions that we are to ask him, unless we could have him nearer to us.

LORD HIGH STEWARD—Mr. Attorney, my lords seem to be of opinion that it will be more for your advantage and theirs that the witnesses stand at the distance they do; which will oblige you to raise your voice so loud, that they may hear the witnesses and you too.

ATTORNEY-GENERAL—Is your name Samuel Cawthorne?

CAWTHORNE—Yes, my lord.

ATTORNEY-GENERAL—Where do you live?

CAWTHORNE—With Mr. Locket at Charing-cross.

ATTORNEY-GENERAL—Did you live with him at the Greyhound tavern in the Strand the latter end of October last?

CAWTHORNE—Yes, I did.

ATTORNEY-GENERAL—Well, pray will you acquaint my lords with the time when my lord of Warwick, my lord Mohun, and Mr. Coote were at that house, how long they stayed, what happened while they were there, and when they went away?

CAWTHORNE—It was Saturday night, the 29th of October last.

ATTORNEY-GENERAL—Pray tell my lords the whole of your knowledge in the matter.

CAWTHORNE—There came my lord of Warwick, my lord Mohun, captain Coote, capt. French, and captain Dockwra, the 29th of October last, in the evening, to my master's house at the Greyhound tavern in the Strand.

ATTORNEY-GENERAL—How long were they there, and what time of night came they in?

CAWTHORNE—About 8 o'clock at night, my lord Warwick, my lord Mohun, capt. French, and capt. Coote, came in.

ATTORNEY-GENERAL—What day do you say it was?

CAWTHORNE—Saturday, the 29th of October last.

ATTORNEY-GENERAL—How long did they continue there?

CAWTHORNE—It was between one and two the next morning before they went away.

ATTORNEY-GENERAL—Was any body sent for to come to them there?

CAWTHORNE—Yes, Mr. James.

ATTORNEY-GENERAL—What time was that?

CAWTHORNE—About twelve of the clock.

ATTORNEY-GENERAL—Did he stay with them til they went away?

CAWTHORNE—Yes.

ATTORNEY-GENERAL—What did you observe pass in the company while they were there?

CAWTHORNE—I did not observe any thing of quarrel, not so much as an angry word amongst them, till they came down to the bar and were going away; when they came down to the bar they ordered me to call them chairs, or coaches; and there were no coaches to be had, and so I went for chairs, and two chairs came; for the porter that went to call the coaches was a great while before he came back; and, as I said, I going for chairs, there came two; but that they said was not enough; so more chairs were called for, and at length there were more chairs gotten; in the first three chairs, my lord of Warwick, my lord Mohun, and captain Coote went away in; and my lord Warwick and my lord Mohun bid the chairmen carry them home.

ATTORNEY-GENERAL—Were there then any other chairs at the door?

CAWTHORNE—There were two more chairs at the door, and another was called for.

ATTORNEY-GENERAL—Did you hear any directions given where they should carry them?

CAWTHORNE—My lord Warwick and my lord Mohun bid them carry them home.

ATTORNEY-GENERAL—Did you hear my lord Warwick or my lord Mohun particularly, and which, say whither they would be carried?

CAWTHORNE—I did hear my lord Mohun say, captain

Coote should go and lie with him, or he would go and lie with capt. Coote that night, for there should be no quarrelling.

ATTORNEY-GENERAL—Did they upon that go away?

CAWTHORNE—Mr. French and Mr. Coote were in chairs before my lord Mohun or my lord Warwick, or any of the rest.

ATTORNEY-GENERAL—What then happened upon their going into the chairs?

CAWTHORNE—My lord Mohun came out to them and swore there should be no quarrel that night, but he would send for the guards and secure them.

ATTORNEY-GENERAL—What happened then?

CAWTHORNE—Upon that, both of them came out of their chairs and came into the house, and there they came to the bar three of them in the passage by the bar, and three of them behind that passage.

ATTORNEY-GENERAL—Pray, will you tell what did really pass throughout the whole transaction? What was done after they came in again into the house?

CAWTHORNE—After that, I was bid to call for six chairs, if I could get no coaches, and so I did; and when I had brought what chairs I could get, and returned to the bar I heard the swords clash; when the swords were drawn I cannot say, nor by whom, it might be by all the six, for aught I know, because I was in the street to call the chairs, and when I came back to the house, I was in hopes all had been quieted, for their swords were putting up: and when they went away in the chairs, I did hope they went away friendly.

ATTORNEY-GENERAL—Pray, how did they go away? who went together?

CAWTHORNE—My lord of Warwick, my lord Mohun,

and captain Coote went in the first three chairs, them three together, and bid the chairmen go home; the sixth chair was not then come.

ATTORNEY-GENERAL—When that chair came, pray what directions were given to it?

CAWTHORNE—I did not hear them give the chairmen any directions at all.

ATTORNEY-GENERAL—Do you know any thing more that was done after this time?

CAWTHORNE—No, my lord, not after they were away; after I returned with the chairs, it was in two minutes' time that they went away.

ATTORNEY-GENERAL—My lords, I suppose he knows no more of the matter.

LORD HIGH STEWARD—Will you then ask him no more questions, Mr. Attorney?

ATTORNEY-GENERAL—No, my lords, unless this noble lord shall ask him any questions, upon which we shall have occasion to examine him.

LORD HIGH STEWARD—My lord, has your lordship any questions to ask this witness? For now is your time, the king's counsel having done examining him.

EARL OF WARWICK—I desire to ask him, whether I did not bid the chairmen go home?

LORD HIGH STEWARD—If your lordship please to propose your question to me, I will require an answer to it from the witness, and it will be the better heard by my lords.

EARL OF WARWICK—My lord, I desire to know of this man, whether, when I went away in the chair from his master's house I did not bid the chairmen go home?

LORD HIGH STEWARD—Witness, you hear my lord's question, what say you to it?

CAWTHORNE—Yes; my lord of Warwick did bid the chairmen go home.

EARL OF WARWICK—My lord, I have another question to ask him, Whether he knows of any quarrel there was between me and Mr. Coote at that time, or any other time; because we both used to frequent that house?

CAWTHORNE—No, my lords, I never heard any angry words between my lord Warwick and Mr. Coote in my life.

[Then the lords towards the upper end of the House complaining that they did not hear his Grace, the Lord High Steward was pleased to repeat the question thus:]

LORD HIGH STEWARD—When my lord of Warwick bid the chairmen go home, or at any other time, did you observe that there had been any quarrel between his lordship and Mr. Coote?

EARL OF WARWICK—My lord, I desire he may be asked, since we both used that house, Whether that night, when I went away, or before or after, I had any quarrel with Mr. Coote?

LORD HIGH STEWARD—The question my lord desires you, that are the witness, to answer, is, Whether you did hear any quarrelling or angry words to pass between my lord Warwick and Mr. Coote that night before or after they came down, or when they went away, or at any other time?

CAWTHORNE—No, my lord, I never heard any angry words pass between them then, nor ever at any time before in all my life, but I always looked upon them to be very good friends.

EARL OF WARWICK—I desire he may be asked, Whether Mr. Coote did not come to that house in my

company, and whether he did not frequently come to that house?

CAWTHORNE—Yes; they used to be there every day almost, and they came that night together in company.

EARL OF WARWICK—I desire he may be asked, whether I have not been frequently in his company there?

CAWTHORNE—Yes; I say very frequently, every day almost, sometimes twice a-day.

LORD HIGH STEWARD—Would your lordship ask him any other question?

EARL OF WARWICK—My lord, I desire he may be asked this question, whether he knows of any particular kindness between Mr. Coote and me?

LORD HIGH STEWARD—Do you know of any particular kindness between my lord Warwick and Mr. Coote, the gentleman that was killed?

CAWTHORNE—Yes, my lord, there was always a great kindness between them, as I observed: it ever was so, and I never heard angry words pass between them, but they were very good friends constantly; I waited upon them generally when they were at my master's house, which was every day almost.

EARL OF WARWICK—I desire to know of this witness, whether he does not remember, or can name, some particular kindnesses that passed between Mr. Coote and me?

LORD HIGH STEWARD—Can you specify any particular instances of kindness that passed between my lord Warwick and Mr. Coote?

CAWTHORNE—Yes; my lord of Warwick used generally to pay the reckoning for Mr. Coote, and he did so at this time.

EARL OF WARWICK—My lord, I desire he may be asked, between whom he apprehended the quarrel to be at this time?

LORD HIGH STEWARD—You say, friend, there were swords drawn and a quarrelling at the bar; can you tell between whom the quarrel was?

CAWTHORNE—My lord Warwick, my lord Mohun, and capt. Coote, were all on one side, and the other three were on the other side.

EARL OF WARWICK—Who were the two persons that it was apprehended the quarrel was between? I desire he may be asked.

LORD HIGH STEWARD—You say, there were three on the one side, and three on the other; pray, between whom did you apprehend the quarrel to be?

CAWTHORNE—I believe the quarrel was between Mr. Coote and Mr. French.

EARL OF WARWICK—My lord, I desire to know of this witness, what words he heard Mr. Coote say after he and Mr. French returned into the house and came out of the chairs.

LORD HIGH STEWARD—What do you say to the question my lord proposes?

CAWTHORNE—I heard Mr. Coote say, he would laugh when he pleased, and he would frown when he pleased, God damn him.

EARL OF WARWICK—My lord, I desire to know, who he thinks those words were addressed to?

LORD HIGH STEWARD—To whom did Mr. Coote speak these words?

CAWTHORNE—Whether he spoke them particularly to Mr. French or to the other two gentlemen who were on the other side of the bar, I cannot directly tell.

EARL OF WARWICK—I desire to know of him, whether Mr. Coote was not one of the three that was on the outside of the bar?

CAWTHORNE—Yes, my lord of Warwick, my lord Mohun, and capt. Coote, were of the outside of the bar.

EARL OF WARWICK—Was capt. Coote with me in the beginning of the night at that house?

CAWTHORNE—Yes, he came at the beginning of the night with my lord of Warwick.

EARL OF PETERBOROUGH—My lords, I desire to ask this witness one question.

LORD HIGH STEWARD—I think it is proper, my lords, in point of method, to let both sides have done before any questions be asked by any of my noble lords.

EARL OF PETERBOROUGH—I did apprehend my lord of Warwick had done.

LORD HIGH STEWARD—No, my lord, not as yet; prays my lord of Warwick, what other questions has your lordship to ask of this witness?

EARL OF WARWICK—My lord, I desire he may be asked particularly this question, whether he perceived any quarrel particularly between me and capt. Coote when we went out of the house?

LORD HIGH STEWARD—You hear the question, did you perceive any quarrel between my lord Warwick and Mr. Coote before they went out of the house?

CAWTHORNE—No, I did not; nor ever saw any quarrel between them in my life.

EARL OF WARWICK—I desire to know who paid the reckoning that night?

CAWTHORNE—The reckoning was called for before I came in to take it; and though I think my lord of Warwick paid for Mr. Coote, yet I cannot so directly

tell, because it was collected before I came into the room to receive it.

LORD HIGH STEWARD—My lord, have you any thing more to ask this witness?

EARL OF WARWICK—No, my lord, at present, that I think of.

LORD HIGH STEWARD—My lord Peterborough, your lordship desired to ask a question, will you please to propose it now?

The Earl of Peterborough reminded the witness that he had said that there were two sides, and that Coote and Lord Warwick were on the same side. He asked what Cawthorne meant by this, and he explained that all six had their swords drawn; that Mohun, Warwick, and Coote were on one side of the bar, and the three captains, James, French, and Dockwra on the other: the cause of quarrel must have occarred above stairs, but he heard nothing pass between them.

LORD HIGH STEWARD—But you have not given a satisfactory answer to that question which the noble lord, my lord Peterborough, asked you, What reason you had to apprehend that the noble lord the prisoner at the bar, and capt. Coote were of a side?

CAWTHORNE—My lord Mohun came to the chairside, when capt. Coote and capt. French were got into the two first chairs, and told capt. Coote, that there should be no quarrel that night but that they three, my lord Warwick, my lord Mohun, and he, should go home together; and I took them three to be of a side, because they were on the outside of the bar together;

and when they all went away, their three chairs went away first, all three together.

LORD HIGH STEWARD—Is that all the reason you can give why you say, they were three and three of a side?

CAWTHORNE—Yes, my lord, I did apprehend it so.

ATTORNEY-GENERAL—If my noble lords have done with their questions I desire to ask this witness another question; my lords, I think this person says, that there was a quarrel at the bar of the house, and swords drawn, and as he apprehended, three were on the one side, and three on the other; but if I take him right, I do not see that he has given your lordships any manner of satisfaction, what reason he had to apprehend there were three and three of a side; or, which will be very material in this case, if your lordships can get to the knowledge of it, which three were on the one side, and which three were on the other; or indeed, whether there were three and three of a side, as your lordships will have reason by-and-bye to enquire a little further into that matter. My lords, I desire he may be asked this plain question, What words or other passages he did perceive, that made him apprehend there was a quarrel between them, and they were three and three of a side?

CAWTHORNE—I apprehended it from the words that Mr. Coote said, That he would laugh when he pleased, and frown when he pleased.

ATTORNEY-GENERAL—Pray, my lord, I desire he may be asked, who those words were spoken to, and who they were applied to?

CAWTHORNE—They were spoke to Mr. James, Mr. French, and Mr. Dockwra, who were within side of the bar.

ATTORNEY-GENERAL—Did he apply those words to all those particular persons?

CAWTHORNE—Yes, as I thought, for they three were within the bar; my lord Warwick, my lord Mohun, and Mr. Coote, were without the bar.

ATTORNEY-GENERAL—Pray, my lord, I desire he may be asked this question. Was that before the swords were drawn, or afterwards?

CAWTHORNE—It was before.

ATTORNEY-GENERAL—Then I desire he may be asked, whether the swords were drawn upon those words?

CAWTHORNE—No, my lord; the time of drawing the swords was when I went out to call chairs and coaches; and I know not who drew the swords first, or when they were drawn; but when I came back I found them all drawn, and I heard them clashing.

ATTORNEY-GENERAL—Upon the oath you have taken, was those words that you speak of Mr. Coote's that he would laugh when he pleased, and frown when he pleased, before the swords were drawn, or after the swords were drawn?

CAWTHORNE—Before the swords were drawn; for I did not see the swords drawn till I came back.

In answer to Lord Wharton, the witness said that Mohun and Warwick had threatened to send for a file of musketeers, and Mohun had done all he could to pacify the quarrellers, and he 'particularly had his finger pricked with endeavouring to cross their swords, and keeping them from fighting; which was all he got from it.' His hand was bloody; but the witness did

not see him hurt, as he was outside at the time. He received their reckoning just before they came down to the bar and stayed there two or three minutes afterwards. It was after Coote came out of his chair that he heard him speak the words he had deposed to; no reply was made to them. Mohun, Warwick, and James had all tried to stop the quarrel and threatened to send for the guard; this was before the swords were drawn downstairs.

ATTORNEY-GENERAL—Pray, my lord, let him be asked this question, Was it after they were three on the one side, and three on the other, that my lord Mohun and my lord Warwick spoke those words?

CAWTHORNE—I apprehend the words were spoke by Mr. Coote, That he would laugh when he pleased, and frown when he pleased, before the swords were drawn.

LORD HIGH STEWARD—But that which my lords desire to know is, What the time was when my lord Warwick and my lord Mohun declared their desire to part them and make them friends; whether before or after the swords drawn?

CAWTHORNE—Before and after; for I was absent when the swords were drawn.

EARL RIVERS—He says, that after my lord Mohun and my lord Warwick threatened to send for the musqueteers, they promised to be quiet. I desire to know who he means by they?

CAWTHORNE—Mr. James called to me, and said, I need not go and call for the guards, for the quarrel was over. There is one thing more that I forgot, my

lord: After my lord Mohun and my lord Warwick were gone away in their chairs, and Mr. Coote, I heard Mr. Dockwra say to capt. James and capt. French, they did not care a farthing for them, they would fight them at any time.

LORD HIGH STEWARD—Who were together then?

CAWTHORNE—Capt. James, Mr. French, and Mr. Dockwra, after my lord Mohun and my lord Warwick were gone with capt. Coote.

LORD HIGH STEWARD—Then Mr. French was with them? Mr. Dockwra said so?

CAWTHORNE—Yes, my lord.

LORD WHARTON—If I apprehend him aright, as to what he says now, my lord of Warwick, my lord Mohun, and capt. Coote, were gone away at that time.

CAWTHORNE—Yes, they were gone away in the three first chairs, which my lord Mohun bid go home.

LORD WHARTON—Who does he say spoke those words?

LORD HIGH STEWARD—You hear my noble lord's question, who spoke those words? Repeat them again.

CAWTHORNE—When my lord Warwick, my lord Mohun, and capt. Coote, were gone, I heard Mr. Dockwra say to Mr. French and Mr. James, We don't care a farthing for them, we will fight them at any time.

ATTORNEY-GENERAL—I desire to know, whether this witness testified any thing of this matter when he was examined before the coroner?

CAWTHORNE—No; I forgot those words when I was examined before the coroner.

ATTORNEY-GENERAL—How soon after your examina-

tion did you recollect yourself as to what you now speak?

CAWTHORNE—The next day after.

He had not mentioned the words he now said were spoken by Dockwra either at the inquest or at the trial at the Old Bailey.

Thomas Browne was sworn.

LORD HIGH STEWARD—What question do you ask this witness, Mr. Attorney?

ATTORNEY-GENERAL—That he would acquaint your lordships, whether he carried Mr. Richard Coote, the person that was slain, upon the 29th or 30th of October, from the Greyhound tavern in the Strand, and to what place he carried him?

LORD HIGH STEWARD—You hear the question; pray speak so loud that my lords may all hear what you say.

BROWNE—My Lords, I was between the hours of one and two in the morning, on Sunday the 30th of October last, with my fellows and our chair, at the Buffler's Head Tavern at Charing-cross, and I heard some people at Locket's, at the Greyhound in the Strand, calling coach coach, a pretty while; but there were no coaches in the street, nor that came to them; when they could not get coaches then they called out for chairs; and we coming to the door with our chair, there were four other chairs there, and six gentlemen stood in the passage; and then it was said, there was not chairs enough, and there wanted one more, and they stood discoursing; and the first man came into my chair, who was capt. Coote, and my

lord of Warwick he got into another; When the door of the chair was shut up, we asked whither we should go; but my lord Mohun came and bid open the chair again; and we did so, and he returned into the house, and there was some discourse between them standing at the bar in the entry. Mr. Coote came out again and came into my chair, and my lord Mohun and my lord of Warwick went into two others; Mr. Coote bid me carry him into Leicester fields, and to make all the haste I could; my lord of Warwick and my lord Mohun being in the next chairs, asked him, Whither are you a-going, and called out twice, and he said, To Leicester fields; pray do not, says my lord of Warwick, but come along with us, and let it alone till to-morrow; but he bid us go on; and as we were turning up St. Martin's Lane, by the Cross Keys tavern, my lord Mohun, and my lord Warwick called out to us to stop, and their chairs came up to the back door of the Cross Keys tavern, and there all the three chairs were set on a-breast in St. Martin's Lane, and while they were talking together, there came by three chairs on the other side of the way; and Mr. Coote bid us take up and make all the haste we could to get before them into Leicester fields, so taking up the chair again, Mr. Coote bid us make haste, and if we could go no faster, he swore, damn him, he would run his sword in one of our bodies: There were two chairs before me, and my lord Mohun and my lord Warwick followed in two chairs after me; and when we came to the corner of Leicester fields, at Green street end, all the three chairs were set down a-breast again, and Mr. Coote put his hand in his pocket, and took out half a guinea to pay, and said he had no silver; and my lord of Warwick spoke to my lord Mohun, who

took out three shillings out of his pocket, who said, there was for my lord Warwick, captain Coote, and himself; and when they were gone out, I took my box and my pipe, and filled my pipe, and took the lanthorn and lighted it, and by that time I had lighted my pipe, I heard a calling out, Chair, chair, again, towards the upper end of the square; so I took my chair, and there was one of the chairs that was not gone; and so we came up to the upper end of the fields, and they called to us to bring the chairs over the rails; we told them we did not know how to do that, for we should not be able to get them back again; at last we did get over the rails, and made up close to the place where we heard the noise, for we could see nothing, it being a very dark night; and when we came up close to them, by our lanthorn there were two gentlemen holding up Mr. Coote under their arms, and crying out, My dear Coote, My dear Coote!

ATTORNEY-GENERAL — Pray, who were those two gentlemen?

BROWNE—I did not know them, one was in red cloaths, and the other had gold lace, and they would have had me have taken Mr. Coote into my chair; but seeing him bloody, and not able to help himself, I said I would not spoil my chair, and so would not meddle with him; but they said they would make me any satisfaction for my chair, and desired me to take him in; but he gave himself a spring from them, and we found he was too heavy for us to lift over the rails, and all we could do could not make him sit in the chair, but the chair was broken with endeavouring to place him there; and they said if we would carry him to a surgeon's, they would give us £100 security;

but we finding it impossible, the watch was called for, but nobody would come near, for they said it was out of their ward, and so they would not come anigh me; and I staid about half an hour with my chair broken, and afterwards I was laid hold upon, both I and my partner, and we were kept till next night eleven a-clock; and that is all the satisfaction that I have had for my chair and every thing.

ATTORNEY-GENERAL—Pray, my lord, I desire he may recollect himself; for we do apprehend it is very material, who it was that desired to take Mr. Coote into the chair.

BROWNE—I cannot tell who they were, it was so very dark I could only see their cloaths.

ATTORNEY-GENERAL — Did you see the earl of Warwick there?

BROWNE—No, Sir, he was not there; one of them, I tell you, had officers' cloaths on, red lined with blue, and the other had gold lace on; there was nobody there that held him up but them two.

MARQUIS OF NORMANBY—He says he saw two persons holding up Mr. Coote; it would be very well to have that matter very well settled, who those two persons were; I desire to know how he is sure my lord of Warwick was not one of them two?

BROWNE—I know my lord of Warwick very well, and I am sure he was neither of the two.

DUKE OF LEEDS—I would know what light he had to discern it so well by, that he can be sure my lord of Warwick was not there; for he says it was a very dark night, and yet he describes the particular persons that held Mr. Coote up.

BROWNE—Yes, my lord, I am sure my lord of Warwick was none of them.

DUKE OF LEEDS—How could you distinguish in so dark a night, the colours of people's cloaths?

BROWNE—With the candle that I had lighted in my lanthorn.

DUKE OF LEEDS—He could not know any of the persons unless he held a lanthorn to their faces, or knew them very well before.

LORD HIGH STEWARD—My lord Warwick, will your lordship ask this witness any questions?

EARL OF WARWICK—My lord, I desire he may be asked, Whether I did not bid him stop at St. Martin's-lane end, and do all that I could to hinder Mr. Coote from going any further, but to go home?

BROWNE—The earl of Warwick, and my lord Mohun, as they turned up the lane, asked Mr. Coote, whither he was going? And when he said to Leicester-fields, they desired him to let it alone till to-morrow; and my lord Mohun said he should go home with him; but the other bid us go on, and said he would not go to his lodgings, but that they would make an end of it that night; still they called to him again, Dear Coote, let us speak a word with you; and as the chairs came to the back-door of the Cross-keys tavern, there they stood all of a breast, and they both of them spoke to him, and stood a pretty while there, and in the mean time three chairs passed by on the other side; he commanded us to take up, and carry him away to Leicester-fields immediately, and overtake the other chairs, or he would run one of us into the body.

LORD HIGH STEWARD—Would your lordship ask him any more questions?

EARL OF WARWICK—No, my lord.

ATTORNEY-GENERAL—My lord, I observe, he says

they discoursed some time together while they stopped in St. Martin's-lane; I desire that he may be asked, Whether he can tell what that discourse was?

BROWNE—I could not well hear, they whispered together, but I could hear my lord Mohun, and my lord of Warwick, desire capt. Coote to go home, and let the business alone till another time.

ATTORNEY-GENERAL—I desire he may explain himself, what that business was that they would have put off till to-morrow.

BROWNE—I know not what it was; I heard of no anger betwixt them, but they were as good friends, for anything I know to the contrary, as ever they were in their lives or as ever I see any men.

ATTORNEY-GENERAL—Our next witness is William Crippes. [Who was sworn.]

LORD HIGH STEWARD—What do you ask this man, Mr. Attorney?

ATTORNEY-GENERAL—Pray, will you give my lords here an account who you carried to Leicester-fields, the 29th or 30th of October, and what happened in your knowledge at that time?

CRIPPES—Captain Coote was the first man that went into the chair when we came to the Greyhound tavern; afterwards he came out again, and when we took him up the second time, he was the first man that set out; and he bid us carry him to Leicester-fields; and when we came to the corner of St. Martin's-lane, we turned up that way; and my lord of Warwick, and my lord Mohun, called to us, being in chairs behind, to know whither we were going, and desired to speak with captain Coote; and he said he was going to Leicester-fields; and when they asked, what to do? He said, to end the business:

they desired him to put it off till to-morrow; and while they were discoursing about it in St. Martin's-lane, there passed by other three chairs, which, when captain Coote saw, he bid us take up and overtake them, and go faster, or he would run one of us into the body: so we went on, and at the lower end of Leicester-fields we set him down; and the other two gentlemen, my lord Warwick and my lord Mohun, were there set down, and went lovingly together, for any thing that I saw, up the pavement of the square, towards the upper end; and in a little time we heard a noise of calling for chairs towards the upper end, and when we came there with the chair, we were bid to lift over the chair within the rails; and when we said it was hard to be done, they insisted upon it, and we did come in; and when we came there we saw two gentlemen holding up captain Coote, and would have had us taken him into the chair; we saw there was a great deal of blood, but I never heard how it came, and they would have had us carried him to a French surgeon's, and proffered any money.

Attorney-General—My lord, I desire to know, who they were that desired him to be carried to the surgeon?

Lord High Steward—You hear the question, what say you?

Cripps—I cannot tell, my lord; one of them had something of lace upon him, but it was so dark that I could hardly see my hand, and therefore I cannot tell who they were; and when there was an objection made, that the chairs would be spoiled, they said we need not question our chair, they would give us £100 security to answer any damages, if we would but carry him; so we endeavoured to put him into

the chair, but could not; and so we called out to the watch, to have had some help; but they said it was none of their ward, and so they would not come to us; so the gentlemen went away, and we left them, and went and called a surgeon, who, when he came, said, he was a dead man, and we were secured till the next day.

ATTORNEY-GENERAL—Pray, my lord, I desire he may be asked, Were there not other chairs in that place at the time?

CRIPPES—There was one in the Field besides, and no more that I could see; they all went away but us two.

ATTORNEY-GENERAL—What distance of time was there between their setting down in Leicester-fields, and their calling the chairs again?

CRIPPES—Not a quarter of an hour.

ATTORNEY-GENERAL—What became of the three chairs that passed by you in St. Martin's-lane?

CRIPPES—They got before us; but what became of them afterwards I cannot tell.

ATTORNEY-GENERAL—Did they come from the same place, the tavern in the Strand that you were at?

CRIPPES—Yes, I believe they did, my lord; for capt. Coote bid us follow them, and threatened us if we did not make greater haste.

ATTORNEY-GENERAL—Do you know my lords of Warwick?

CRIPPES—Yes, he had whitish cloaths on; and none but he had such clothes on as those were.

LORD HIGH STEWARD—Will your lordship ask this witness any questions?

EARL OF WARWICK—My lord, I desire he may be asked, Whether I did not bid him stop? and,

whether I did not say, they should not go to quarrel that night?

ATTORNEY-GENERAL—My lord, I desire to know of him, directly and downright, Whether my lord of Warwick was not one of them that held him when he was within the rails of the fields?

CRIPPES—No, he was not; he was neither of them; for the one of them was too big for him, and the other was too little for my lord Mohun.

ATTORNEY-GENERAL—Now we call the chairman that carried the earl of Warwick into Leicester-fields, James Crattle.

(He was sworn.)

ATTORNEY-GENERAL—Will you tell my lords what you know of any person that you carried the 29th or 30th of October last, from the Greyhound tavern in the Strand, and who it was, and whither you carried him?

CRATTLE—I was going along Charing-cross, between one and two in the morning, the 30th of October, last, and I heard a chair called for at Locket's at the Dog tavern; and thither I and my partner went, and we took up the gentleman, and carried him to Leicester-fields.

ATTORNEY-GENERAL—Who was that gentleman?

CRATTLE—It was my lord of Warwick.

ATTORNEY-GENERAL—What time of night do you say it was?

CRATTLE—It was about one or two in the morning.

ATTORNEY-GENERAL—What day of the week was it?

CRATTLE—It was Saturday night and Sunday morning.

ATTORNEY-GENERAL—Whither did you carry him?

CRATTLE—Into Green-street, towards the lower end of Leicester-square.

ATTORNEY-GENERAL—What chairs were there more there?

CRATTLE—There was one that captain Coote was in, and another that my lord Mohun was in, and we went away all together.

ATTORNEY-GENERAL—Were there no other chairs?

CRATTLE—I did not know who went in the other chairs, but there were three other chairs that passed by us at St. Martin's-lane, and we followed after them to Leicester-fields.

ATTORNEY-GENERAL—Pray what became of you after you had set down your fare?

CRATTLE—We were discharged and paid; the other three went up towards my lord of Leicester's; but we were coming away, and in a little time we heard the noise of calling chairs! chairs! again, and there were two chairs did come up, Thomas Browne's and ours; my lord of Warwick called our chair, and we took him into it, and he bid us carry him to the Bagnio in Long-acre; and when we came there we knocked at the door, and his hand was bloody, and he asked us if we had any handkerchief to bind up his hand.

ATTORNEY-GENERAL—Was there any other chairs at the door of the Bagnio, at the same time when you came there?

CRATTLE—Yes, there was another chair there at the door at the same time, and we set down both together.

ATTORNEY-GENERAL—Pray whence came that chair?

CRATTLE—Indeed, I do not know.

ATTORNEY-GENERAL—Who were the chairmen that carried that chair?

CRATTLE—Indeed, my lord Mohun and my lord Warwick were the only persons that I knew of all the company.

ATTORNEY-GENERAL—What sort of gentleman was the other, that went out of the other chair into the house?

CRATTLE—He was a pretty tall man; when he was in we went away; I only can say, I saw my lord of Warwick go into the house.

ATTORNEY-GENERAL—Did you take any notice of any sword that my lord of Warwick had in his hand at that time?

CRATTLE—No; I cannot say I did take any notice of any sword, only that there was a handkerchief desired.

ATTORNEY-GENERAL—Pray, did you hear no noise at all in the field, till you heard chairs called for again?

CRATTLE—No; I cannot say I heard any noise in the field.

ATTORNEY-GENERAL—Did you apprehend there was any fighting?

CRATTLE—No, I knew nothing at all of it; but upon the calling of chairs again, and my lord Warwick coming along, we took him in, and he bid us go to the Bagnio, and thither we went.

ATTORNEY-GENERAL—My lord, we have done with this witness.

LORD HIGH STEWARD—My lord Warwick, will you ask this witness any questions?

EARL OF WARWICK—No, my lord.

Gibson, the other chairman who carried the Earl of Warwick, was then called, and gave substantially the same evidence as the last witness.

Applegate carried Lord Mohun to Leicester

Fields, and corroborated the account of the journey thither given by the other witnesses.

ATTORNEY-GENERAL—What then happened afterwards, can you tell?

APPLEGATE—I cannot tell whether I had lighted my pipe, or was just lighting it, when I heard chairs called again; upon which we run up with our chairs towards the upper end of the fields, and there I did see my lord of Warwick within the rails, who bid us put over our chair into the fields; but we told him, if we did, we could not get it over again; and so we went with our chair to the corner of the fields; and when we came there, there came out captain French, who bid us open our chairs, and let him in, for he did believe he was a dead man; and upon that we did take him in, and he bid us carry him with all the speed we could to the Bagnio in Long-acre, and my lord of Warwick got into another chair behind; so we went to Long-acre; and when we came to the door of the Bagnio and captain French came out of the chair, he was so weak that he fell down upon his knees; and when he came out, I asked who should pay me, and desired to be discharged; and the earl of Warwick said, Damn ye, call for your money to-morrow; so they both went in at the Bagnio door together.

ATTORNEY-GENERAL—Pray, who called for the chair first, captain French, or my lord of Warwick, in the fields?

APPLEGATE—I cannot tell; but when I brought up my chair, I first saw my lord of Warwick, and he would have had me lifted the chair over the rails, and I told him we could not get it over again, and so went up to the upper end of the fields.

ATTORNEY-GENERAL—If you first spoke with my lord of Warwick, why did you not carry my lord of Warwick?

APPLEGATE—Indeed I cannot tell; but I suppose it was because he did not come so soon out of the fields as captain French, or did not come the same way.

ATTORNEY-GENERAL—Pray, do you remember anything that happened just at their carrying capt. French away?

APPLEGATE—Before he went into the chair, he stopped and would have pulled off his cloaths, but we would not let him.

ATTORNEY-GENERAL—Did you see any sword capt. French had?

APPLEGATE—I did see no sword that I can say directly was a sword; but capt. French had something in his hand, but what it was I cannot tell.

ATTORNEY-GENERAL—What was it that he said to you, when he first went into the chair?

APPLEGATE—He desired to be carried to the Bagnio; for he said he believed he was a dead man.

ATTORNEY-GENERAL—Pray friend, recollect yourself, if you heard him say any thing at all when he first went into the chair at the Greyhound tavern?

APPLEGATE—I did not hear him mention any thing at all.

ATTORNEY-GENERAL—Pray what did you hear my lord of Warwick say at that time?

APPLEGATE—Truly, I cannot say I heard him mention any thing at all neither; but I did hear my lord Mohun say, when he could not prevail, in St. Martin's-lane, with captain Coote to go home, that if they did go he would go and see it.

ATTORNEY-GENERAL—If they did go; who did he mean by they?

APPLEGATE—My lord Warwick and captain Coote that were in the other chairs; there was nobody else to speak to.

ATTORNEY-GENERAL—Was there any talk of fighting or quarrelling?

APPLEGATE—No, indeed, I do not know of any difference there was between them.

LORD HIGH STEWARD—My lord Warwick, will your lordship ask this witness any questions?

EARL OF WARWICK—My lord, I desire he may be asked, Whether I did not endeavour to put off the going into Leicester-fields, and to have all things let alone till to-morrow.

APPLEGATE—My lord, I cannot say any thing of that; but I did hear my lord Mohun beg heartily of captain Coote to go home, and let the business alone till another time; and indeed I think, I never heard a man beg more heartily for an alms at a door, than he did that they might not go into the fields then; but I cannot say that I heard any thing that my lord of Warwick said about it.

LORD HIGH STEWARD—Will your lordship ask him any other questions?

EARL OF WARWICK—No, my lord.

Catro, who was the second chairman who carried Lord Mohun's chair, corroborated Applegate's evidence. Palmer, Jackson, and Edwards were three chairmen who had helped to carry French, James, and Dockwra to Leicester Fields; but they had nothing to add to the evidence already given.

Pomfret was a servant at the Bagnio in Long Acre. In answer to the Attorney-General he said:—

My lord, on Sunday the 30th of October last, between two and three in the morning, there came to my master's door the earl of Warwick, and knocked at the door, and there was capt. French with him; and when they were let in, my lord of Warwick told me that capt. French was wounded, and he himself had a wound, and he desired that my master might be called up for to dress the wounds; especially, because capt. French was very much wounded; which accordingly was done in about a quarter of an hour after they were brought in.

ATTORNEY-GENERAL—Did he desire to be concealed when he was come in?

LORD HIGH STEWARD—Of whom do you speak, Mr. Attorney?

ATTORNEY-GENERAL—My lord of Warwick.

POMFRET—He did desire, that if any body asked for him, it should be said he was not there.

ATTORNEY-GENERAL—Pray in what condition did my lord of Warwick seem to be in at that time?

POMFRET—He seemed to be very much concerned at that time, and his right hand, in which he had his sword, and which was drawn, was very much bloody.

ATTORNEY-GENERAL—Was the sword bloody that he had in his hand?

POMFRET—The blade was bloody; but whether it was all over bloody, I cannot tell; there was besides some blood upon the shell; it was very near all over bloody, as I remember.

ATTORNEY-GENERAL—Pray, friend, consider what you swore at the Coroner's Inquest about the blood upon the sword.

POMFRET—Indeed I cannot say it was bloody all along the blade; but there was blood upon the shell, and there was blood upon the inside: it was so, to the best of my remembrance.

ATTORNEY-GENERAL—What condition was Mr. French's sword in?

POMFRET—He had a drawn sword in his hand, but I did not perceive it had any blood upon it; it was a large blade.

ATTORNEY-GENERAL—How do you know what sort of sword Mr. French's was, and in what condition it was?

POMFRET—He desired me to take notice of it next morning, and I did so; and there was no blood upon it.

ATTORNEY-GENERAL—How came you to be desired to take notice of what passed there about the swords?

POMFRET—My lord, there was three of them the next day, and one, it was said, was Mr. Coote's, and another of them was my lord of Warwick's, which I do believe was bloody from the point upwards, very near; but I cannot directly say but that was afterwards.

ATTORNEY-GENERAL—Who brought in that sword that you say was Mr. Coote's?

POMFRET—To the best of my remembrance, capt. Dockwra brought it in; it was almost half an hour after my lord Warwick and capt. French came in to the house, when they came thither.

ATTORNEY-GENERAL—They, who do you mean?

POMFRET—Captain James and he.

ATTORNEY-GENERAL—Were they let in presently?

POMFRET—No, my lord of Warwick had desired that they might be private there; but when they knocked at the door, my lord of Warwick desired to know who they were; and when it was understood that they were Mr. James and Mr. Dockwra, they were let in by my lord's order.

ATTORNEY-GENERAL—Pray, which of all the four brought in any sword in a scabbard?

POMFRET—It was captain Dockwra.

ATTORNEY-GENERAL—Pray, did they appear to be all of a party?

POMFRET—They were glad to see one another; and they talked a pretty while together; but indeed I cannot say I heard what they talked.

ATTORNEY-GENERAL—Pray, do you remember my lord of Warwick's sword, and what there was upon it?

POMFRET—It was a steel sword, water-gilt, and as near as I can remember, there was blood upon it for the most part from the point upward.

ATTORNEY-GENERAL—And what did appear upon Mr. French's sword?

POMFRET—There was water and dirt, but there was no blood at all.

ATTORNEY-GENERAL—How long did they stay there?

POMFRET—They all continued about half an hour; and then went away, all but Mr. French, who staid there.

ATTORNEY-GENERAL—What then became of the others?

POMFRET—Mr. James, Mr. Dockwra, and my lord of Warwick went away; and my lord of Warwick desired particularly, that we would all take care of

Mr. French, for he was his particular friend; and Mr. French continued there till Sunday about one of the clock.

ATTORNEY-GENERAL—Was there any discourse at that time about Mr. Coote?

POMFRET—Not that I heard of, one word.

ATTORNEY-GENERAL—Was there any notice taken of any quarrel that happened between any body, and who?

POMFRET—No, indeed, I did not hear them take notice of any quarrel at all between any body.

ATTORNEY-GENERAL—You say Mr. French, when he came into your house, was wounded, and there was care particularly taken of him because he was wounded.

POMFRET—Yes; my lord of Warwick desired to take care of him.

ATTORNEY-GENERAL—Then pray, was there no discourse how he came to be wounded?

POMFRET—Indeed I do not know how he came to be wounded; nor did I hear one word of discourse about it; indeed I cannot say any thing who wounded him.

ATTORNEY-GENERAL—Pray will you recollect yourself, and tell my lords what sort of handle had my lord of Warwick's sword when you saw it?

POMFRET—It had a steel handle.

ATTORNEY-GENERAL—Pray, can you tell whether the shell was open or close?

POMFRET—I cannot tell justly; I saw it, and that was all.

ATTORNEY-GENERAL—If I apprehend you, you say my lord had a wound in his hand.

POMFRET—Yes, my lord, he had so.

ATTORNEY-GENERAL—Pray, in what hand was it that he was wounded?

POMFRET—To the best of my remembrance, it was in his right hand.

ATTORNEY-GENERAL—Pray, did there appear much blood there?

POMFRET—Yes, my lord, indeed there did.

SERJEANT WRIGHT—You talk of Mr. James and Mr. Dockwra's swords; pray in what condition were they?

POMFRET—Mr. Dockwra's sword was by his side, and not drawn.

SERJEANT WRIGHT—What did you observe of captain James's sword?

POMFRET—His sword was naked, and he had lost his scabbard; but how that came I cannot tell; and there was dirt on one side of the sword; and he said he had left his scabbard behind him.

ATTORNEY-GENERAL—Was there any blood upon his sword?

POMFRET—No, there was no blood that I did see upon it.

ATTORNEY-GENERAL—Pray did you see any blood upon Mr. Dockwra's sword?

POMFRET—No, indeed, I did not see Mr. Dockwra's sword, it was in the scabbard by his side.

Warwick's was 'a pretty broad sword': he did not take notice what length or breadth the other swords were of; French's sword was not a broad sword; he saw the swords at about three in the morning. James broke his sword on the floor after he came in.

Goodall, a servant in the Bagnio, and his wife were called. They spoke to Warwick coming in with his sword drawn in his hand and bloody; his hand was wounded. There was blood on the hilt of his sword, which was a close one. French may have come in with Warwick; James and Dockwra came in half an hour afterwards. Warwick gave orders that nobody was to be admitted; but he opened the door for James and Dockwra when they knocked and he saw who they were. Warwick, James, and Dockwra went away in a little time, Warwick ordering that particular care should be taken of French, who was his friend.

Henry Amy, the surgeon who lived at the Bagnio, was called, and said that he was called up at two in the morning of the 20th of October to attend the lord Warwick and captain French. The latter was seriously wounded, the former on the first joint of his fore-finger. While French's wound was being dressed there was a knocking at the door; Warwick ordered that nobody should be admitted, but when he found it was James and Dockwra ordered that they should be let in. They and Warwick went away in a little time, the latter telling the witness to take particular care of French. Warwick's sword was very bloody; French called for his sword the next morning, when the witness saw it, and it was a little dirty, but not with blood. There was

no talk of any quarrel; the witness asked no questions; he did not then hear anything about Coote being killed. French's sword was a middle-sized one; it was not a broad blade.

Lord High Steward—Mr. Attorney, who is your next witness?

Attorney-General—Captain Loftus Duckinfield.

(Who was sworn).

Attorney-General—This gentleman will acquaint your lordships what discourse past between these gentlemen the next day; pray, Sir, acquaint my lords what you heard about Mr. Coote's death, and when and where.

Captain Duckinfield—Early in the morning I was told of this accident.

Attorney-General—By whom?

Captain Duckinfield—One of the company, I cannot tell who, I think they were all together then, my lord of Warwick, capt. James, capt. Dockwra, and nobody else.

Attorney-General—What was their discourse?

Captain Duckinfield—They said, they believed captain Coote was killed.

Attorney-General—Did they tell you by whom?

Captain Duckinfield—By Mr. French, every body did say he was his adversary.

Attorney-General—What account was given of the action?

Captain Duckinfield—They said it was done in the dark, and capt. French was his adversary.

Attorney-General—Was there any notice taken of any duel?

Captain Duckinfield—Yes, there was, between

those two, and the other persons on both sides; and it was said my lord of Warwick was friend to Mr. Coote, and my lord Mohun.

ATTORNEY-GENERAL — Who were on the other side?

CAPTAIN DUCKINFIELD — Mr. Dockwra and Mr. James.

ATTORNEY-GENERAL—Was there any discourse, who actually fought?

CAPTAIN DUCKINFIELD — It was said, that capt. French fought with capt. Coote, as they believed, and Mr. James with my lord of Warwick.

ATTORNEY-GENERAL—Did you see my lord of Warwick's sword?

CAPTAIN DUCKINFIELD—Some time of the day I did; but I cannot tell whether it was in the morning, or no.

ATTORNEY-GENERAL—In what condition was it? Was it bloody or not?

CAPTAIN DUCKINFIELD—It was a steel sword.

ATTORNEY-GENERAL—How long did they stay with you?

CAPTAIN DUCKINFIELD—About half an hour.

ATTORNEY-GENERAL—Did they come publicly?

CAPTAIN DUCKINFIELD—We went away in a hackney coach together.

ATTORNEY-GENERAL — Pray, what discourse was there about consulting to go into the country together?

CAPTAIN DUCKINFIELD—That might be discoursed, but by whom I cannot tell.

ATTORNEY-GENERAL—Did my lord of Warwick talk of going into the country?

CAPTAIN DUCKINFIELD — Whether the company

talked of it, or my lord of Warwick in particular, and the rest assented to it, I cannot well tell.

ATTORNEY-GENERAL—Whither did they go?

CAPTAIN DUCKINFIELD—I cannot directly tell.

ATTORNEY-GENERAL—What time of the day was it?

CAPTAIN DUCKINFIELD—It was about six of the clock.

ATTORNEY-GENERAL—Cannot you tell whither they went?

CAPTAIN DUCKINFIELD—Capt. James and capt. Dockwra went to the Ship and Castle in Cornhill about five o'clock or six, as near as I can remember.

ATTORNEY-GENERAL—Can you tell what time my lord of Warwick went away?

CAPTAIN DUCKINFIELD—No, I cannot tell what time he went away, not directly.

ATTORNEY-GENERAL—Can you tell of any agreement amongst them, whither they were to go?

CAPTAIN DUCKINFIELD—No I cannot.

ATTORNEY-GENERAL—What discourse or concern did you observe past between them, concerning capt. Coote?

CAPTAIN DUCKINFIELD—My lord of Warwick shewed a great deal of concern for his friend Mr. Coote.

ATTORNEY-GENERAL—Had you any notice of Mr. Coote's death amongst you?

CAPTAIN DUCKINFIRLD—We had notice before we went away; but I cannot tell whether it was before my lord of Warwick was gone.

ATTORNEY-GENERAL—Was it after the discourse of going into the country, or before?

CAPTAIN DUCKINFIELD—Indeed, I cannot directly say when it was.

ATTORNEY-GENERAL—Pray, what reason was there for their going into the country before he was dead?

CAPTAIN DUCKINFIELD — They believed he was dead.

ATTORNEY-GENERAL—Cannot you tell the reason why they would go into the country?

CAPTAIN DUCKINFIELD—No, indeed, I cannot tell the reason.

ATTORNEY-GENERAL—Did you observe my lord of Warwick's sword? Was there any blood upon it?

CAPTAIN DUCKINFIELD—I cannot say his sword was bloody at the point; the whole blade and shell was bloody, to the best of my remembrance.

ATTORNEY-GENERAL—What sort of a sword was it?

CAPTAIN DUCKINFIELD—It was a pretty broad blade, a hollow blade, and a hollow open shell.

ATTORNEY-GENERAL—Was there any discourse concerning capt. French?

CAPTAIN DUCKINFIELD—Yes, they thought he was very ill wounded.

ATTORNEY-GENERAL—Was there any, and what, discourse who should give my lord of Warwick his wound?

CAPTAIN DUCKINFIELD—It was said, they believed capt. James gave my lord his wound.

ATTORNEY-GENERAL—Pray, was there any blood upon Mr. James's sword, or was he wounded?

CAPTAIN DUCKINFIELD—I saw no wound upon capt. James, that I know of.

LORD HIGH STEWARD—Do you believe that my lord Warwick's sword was bloodied with the hurt of his own hand, or any otherwise?

CAPTAIN DUCKINFIELD—I cannot tell; it was a cut shell, and the outside bloody as well as the in.

LORD HIGH STEWARD—My lord Warwick, will your lordship ask this witness any questions?

EARL OF WARWICK—No, my lord.

LORD HIGH STEWARD—Mr. Attorney, if you have any other witness, pray call them.

Another Witness was produced, that belonged to the Ship and Castle in Cornhill.

ATTORNEY-GENERAL—This man will give you an account what passed at his house at that time, and between whom; pray, will you tell my lords who was at your house the 30th of October last, and what past there then?

WITNESS—My lord of Warwick, capt. James and capt. Dockwra; and when my lord of Warwick came in I thought my lord was in a very great concern, and called for pen, ink and paper, and I feared there was some quarrel in hand; but they said no, the quarrel was over, and says my lord of Warwick, I am afraid major Coote is killed.

ATTORNEY-GENERAL—Did you observe any desire to be private?

WITNESS—No, indeed, I cannot tell that.

ATTORNEY-GENERAL—How long did they continue there?

WITNESS—About six a-clock my lord of Warwick, and capt. James, and capt. Dockwra, and capt. Duckinfield went away.

ATTORNEY-GENERAL—Can you tell who went with my lord Warwick?

WITNESS—No, indeed, I cannot tell who went with my lord Warwick; there came in a gentleman in black, whom I knew to be my lord of Warwick's steward, and he came and spoke some words to my lord of Warwick, about a quarter of an hour after they came

in, and then they went away, for after that I did not hear any further discourse.

ATTORNEY-GENERAL—What became of the rest of the company?

WITNESS—They went away; I do not know what became of them, nor whither they went; some of them went in and out of one room into another several times, two or three times, and came out again.

ATTORNEY-GENERAL—My lord, we have done with the witness.

LORD HIGH STEWARD—My lord Warwick, will you ask him any questions?

EARL OF WARWICK—No, my lord.

Mr. Salmon, the surgeon who, by the coroner's orders, examined Coote's wounds, was called. There were two wounds: one on the left breast, near the collar-bone, running down four or five inches. He could not guess what sort of a sword made it; the wound was about half an inch broad. There was another wound under the last rib on the left side, an inch broad, six inches deep. They were both mortal. In answer to Lord Warwick, he said that neither could be given by a sword run up to the hilt. He could not say that they must have been given by the same weapon: but they might have been.

Stephen Turner, Coote's servant, identified his master's sword; he believed he fenced with his right hand, but had never seen him fence at all.

EARL OF WARWICK—I desire he may be asked, whether he has not observed a particular kindness and friendship between his master and me?

TURNER—Yes, my lord; I have several times waited upon my master, when my lord and he was together, and they were always very civil and kind one to another; and I never heard one word of any unkindness between them.

EARL OF WARWICK—Whether he knows of any quarrel that was between us?

TURNER—No, I never did.

EARL OF WARWICK—Whether he did not use to lie at my lodgings sometimes?

LORD HIGH STEWARD—You hear my lord's question: what say you? Did your master use to lie at my lord of Warwick's lodgings at any time?

TURNER—Yes; very often.

ATTORNEY-GENERAL—Pray call Pomfret again, and let him see the sword.

[Then he came in, and two swords were shewn him.]

ATTORNEY-GENERAL—I desire he may acquaint your lordships what he knows of those two swords.

POMFRET—These two swords were brought in by some of the company that came to my master's house; and when they were shewn to captain French in the morning he owned this to be his, and the other to be Mr. Coote's; and he desired that notice might be taken, that his sword was dirty but not bloody; and there was some blood upon the other.

ATTORNEY-GENERAL—Who brought in Mr. Coote's sword?

POMFRET—Indeed I cannot tell.

White, the coroner, was called, and said that he had asked Salmon whether the two wounds on Coote's body were given by the same weapon, and he said he could not say.

ATTORNEY-GENERAL—We have done with our evidence, until we hear what my lord of Warwick says to it.

LORD HIGH STEWARD—My lord of Warwick, will you ask this witness any questions?

EARL OF WARWICK—No, my lord.

LORD HIGH STEWARD—Make proclamation for silence.

CLERK OF THE CROWN—Serjeant at arms, make proclamation.

SERJEANT-AT-ARMS—O yes, O yes, O yes! His grace, my lord high steward of England, does strictly charge and command all manner of persons here present to keep silence, upon pain of imprisonment.

LORD HIGH STEWARD—My lord of Warwick, the king's counsel have made an end of giving evidence for the king; now is the proper time for you to enter upon your defence.

EARL OF WARWICK—May it please your grace, and you my noble lords, my peers.

I stand here before your lordships, accused of the murder of Mr. Coote, of which I am so innocent, that I came and voluntarily surrendered myself so soon as I heard your lordships might be at leisure to try me; and had sooner done it, but that the king was not then here, nor your lordships sitting, and had no mind to undergo a long confinement; and now I think I might well submit it to your lordships' judgment, even on the evidence that has been offered against me, whether there hath been any thing proved

of malice prepense, or my being any actor therein, so as to adjudge me guilty. And I think I may with humble submission to your lordships say, that my innocence appeareth even from several of the witnesses who have been examined against me, which I will not trouble your lordships to repeat, but submit to your memory and observation.

But, my lords, the safety of my life does not so much concern me in this case, as the vindication of my honour and reputation from the false reflections to which the prosecutor has endeavoured to expose me; and I shall therefore beg your lordships' patience to give a fair and full account of this matter: in which the duty I owe to your lordships, and to justice in general, and the right I owe to my own cause in particular, do so oblige me, that I will not in the least prevaricate, neither will I conceal or deny any thing that is true.

My lords, I must confess I was there when this unfortunate accident happened, which must be a great misfortune in any case, but was more so to me in this, because Mr. Coote was my particular friend; and I did all I could to hinder it, as your lordship may observe by the whole proceedings.

It was on the Saturday night when my lord Mohun and I, and several other gentlemen, met at Locket's, where the same company used often to meet; and in some time after several of us had been there, Mr. Coote came unexpectedly, and for some time he and we were very friendly, and in good humour, as we used to be with each other; but then there happened some reflecting expressions from Mr. Coote to Mr. French, who thereupon called for the reckoning; and it being paid, we left the upper room, and I

proposed to send three bottles of wine to my own lodging, and to carry him thither to prevent the quarrel. But while the company stopped to call for a glass of ale at the bar below, Mr. Coote (whose unfortunate humour was sometimes to be quarrelsome) did again provoke Mr. French to such degree, that they there drew their swords; but we then prevented them of doing any mischief: then Mr. Coote still insisting to quarrel further with Mr. French, my lord Mohun and I proposed to send for the guards to prevent them: but they had got chairs to go towards Leicester-fields; and my lord Mohun and I, as friends to Mr. Coote, and intending to prevent any hurt to him, did follow him in two other chairs; and as he was going up St. Martin's-lane, stopped him, and I extremely there pressed him to return and be friends with Mr. French, or at least defer it, for that the night was very dark and wet; and while we were so persuading of him, Mr. French in one chair, and Mr. James and Mr. Dookwra in two other chairs past by us (which we guessed to be them), on which Mr. Coote made his chairmen take him up again, and because the chairmen would not follow Mr. French faster, threatened to prick him behind; and when we were gone to Green-street and got out of our chairs, Mr. Coote offered half a guinea to be changed to pay for all our three chairs, but they not having change, he desired lord Mohun to pay the three shillings, which he did. And in a few minutes after, Mr. Coote and Mr. French engaged in the fields, whither I went for the assistance and in defence of Mr. Coote, and received a very ill wound in my right hand; and there this fatal accident befel Mr. Coote from Mr.

French whom Mr. Coote had dangerously wounded, and I must account it a great unhappiness to us all who were there: but so far was I from encouraging of it, that I will prove to your lordships that I did my utmost endeavours to prevent it; so far from any design upon him, that I exposed my own life to save his; so far from prepense malice, that I will, by many witnesses of good quality and credit, prove to your lordships a constant good and uninterrupted friendship from the first of our acquaintance to the time of his death; which will appear by many instances of my frequent company and correspondence with him, often lending him money, and paying his reckonings; and about two months before his death lent him an hundred guineas towards buying him an ensign's place in the guards, and often, and even two nights before this, he lodged with me, and that very night I paid his reckoning. And when I have proved these things, and answered what has been said about the sword and what other objections they have made, I doubt not but that I shall be acquitted to the entire satisfaction of your lordships, and all the world that hear it.

Before I go upon my evidence, I will crave leave further to observe to your lordships, that at the Old Bailey, when I was absent, Mr. French, James, and Dockwra, have been all tried on the same indictment now before your lordships; and it was then opened and attempted, as now it is, to prove it upon me also; and by most of them the same witnesses who have now appeared; and they were thereupon convicted only of manslaughter, which could not have been, if I had been guilty of murder. And on that trial it plainly appeared that Mr. French was the person

with whom he quarrelled, and who killed him. And now I will call my witnesses.

LORD HIGH STEWARD—Will your lordship please to go on to call your witnesses, for the proof of what you have said; that is the method, and then you are to make such observations as you please.

EARL OF WARWICK—My first witness is capt. Keeting, who was with me at Locket's, but went away before capt. Coote or any of them came; and he will tell you I was with him a while.

[Then captain Keeting stood up.]

LORD HIGH STEWARD—Capt. Keeting, you are not upon your oath, because the law will not allow it. In cases of this nature the witnesses for the prisoner are not to be upon oath; but you are to consider that you speak in God's presence, who does require the truth should be testified in all causes before courts of judicature; and their lordships do expect, that in what evidence you give here, you should speak with the same regard to truth as if you were upon oath; you hear to what it is my lord of Warwick desires to have you examined, what say you to it?

CAPTAIN KEETING—My lord, I will tell your lordship all the matter I know of it. I met with my lord of Warwick that evening at Tom's Coffee-house, and we continued there till about eight at night; I went away to see for a gentleman that owed me money, and afterwards I went to Locket's; and while I was there, the drawer came up and told me, my lord of Warwick desired to speak with me; and when he came up into the room, he said he was to meet with my lord Mohun there, and capt. Coote, and he asked me if I knew where capt. French and capt. James were; I told him I dined with capt. Coote at Shuttle-

worth's; and in a while after, capt. Coote came in, and about an hour and an half, I think, I continued there, and capt. French came in; capt. Dockwra and we drank together for an hour and an half, and they admired, about ten o'clock that my lord Mohun was not come; and I payed my reckoning, not being very well, and away I went home; Mr. James came in just before I went away; but there was no quarrelling, nor any thing like it before I went away.

EARL OF WARWICK—My lord, I desire he may be asked, Whether we did not usually meet there as friends, especially capt. Coote and I?

CAPTAIN KEETING—Captain Coote and my lord of Warwick used to be almost every day together at that place.

EARL OF WARWICK—Pray, did he ever know or observe any difference or quarrel between capt. Coote and me?

CAPTAIN KEETING—No, my lord, I never saw any thing but the greatest friendship between my lord of Warwick and captain Coote that could be; I was with them, and saw them together almost every day.

LORD HIGH STEWARD—Have you any thing further to examine this witness to?

EARL OF WARWICK—No, my lord, I have no further question to ask him.

LORD HIGH STEWARD—Who is your next witness, my lord?

EARL OF WARWICK—My lord, I suppose I shall not need to trouble you to examine the chairmen over again; your lordships have heard what they can say: I desire colonel Stanhope may be called.

[Who it seems stood by the Chair of State, and it was some while before he could get round to come to the place the witnesses were to stand.]

LORD HIGH STEWARD—While this witness gets round, if your lordship has any other witness ready to stand up, pray let him be called.

EARL OF WARWICK—To prove the kindness between capt. Coote and me, I desire col. Blisset may be called. [Who stood up.]

LORD HIGH STEWARD—What is it your lordship asks this witness or calls him to?

EARL OF WARWICK—To testify what he knows of any kindness or unkindness between capt. Coote and me; whether he has not been often in our company?

LORD HIGH STEWARD—Have you been often in company with my lord of Warwick and capt. Coote?

COLONEL BLISSET—Yes, my lord, I was very well acquainted with both of them for a twelve-month past before this accident and I have often been in their company, and always observed that there was a great deal of friendship and kindness between them.

EARL OF WARWICK—My lord, I desire he may tell any particular instance that he knows or can remember.

COLONEL BLISSET—I remember when capt. Coote had his commission in the regiment of guards, he was complaining of the streightness of his circumstances; he was to pay for his commission 400 guineas, and said he had but 300 for to pay for it: and my lord of Warwick did then say to him, do not trouble yourself about that, or let not that disturb you, for I will take care you shall have 100 guineas, and he said he would give order to his steward to pay him so much; and I was told afterwards that he did so.

EARL OF WARWICK—I desire he may tell, if he knows of any other particular instances of my friendship to Mr. Coote?

COLONEL BLISSET—Once when he was arrested by his taylor for £13, my lord lent him five guineas, and used very frequently to pay his reckoning for him.

EARL OF WARWICK—I desire he may tell, if he knows any thing else; and whether he has not lain at my lodgings, and particularly but some small time before this accident happened.

COLONEL BLISSET—About ten days before this unhappy accident happened, I was at my lord of Warwick's lodgings, and when I came there I found capt. Coote a-dressing himself; and I asked him how that came to pass, and they told me they had been up late together, and that he had sent home for his man to dress himself there, upon which I did observe that they had been a-rambling together over night; and there was a very great familiarity between them.

EARL OF WARWICK—Did you observe any quarrel between us?

COLONEL BLISSET—No, none at all; I never knew of any quarrel between my lord of Warwick and capt. Coote, but I observed there was a particular kindness between them; and a great deal of friendship I know my lord of Warwick shewed to him, in paying of reckonings for him, and lending him money when he wanted.

EARL OF WARWICK—My lord, I desire he may be asked, whether he does not know that capt. Coote was straitened for money?

COLONEL BLISSET—I did hear capt. Coote say, that he had not received any thing from his father for 13 months, and his father was angry with him, and would not send him any supply, because he would not

consent to cut off the entail, and settle two or three hundred pounds upon a whore he had.

ATTORNEY-GENERAL—Pray, Sir, will you consider with yourself, and though you are not upon your oath, answer the questions truly, for you are obliged to speak the truth, though you are not sworn, whenever you come to give your testimony in a court of judicature; pray, acquaint my noble lords here, whether you did never hear my lord Warwick complain of capt. Coote?

COLONEL BLISSET—No, I never did hear him complain of him.

ATTORNEY-GENERAL—Did you never hear the least word of any quarrel between them?

COLONEL BLISSET—No, indeed, I did never hear of any quarrel between them.

ATTORNEY-GENERAL—Did you never hear of any unkindness at all?

COLONEL BLISSET—No, indeed, my lord, not I: I never so much as heard of the least unkindness whatsoever.

LORD HIGH STEWARD—Well then, my lord, who do you call next?

EARL OF WARWICK—Now colonel Stanhope is here, I desire he may be asked the same question, whether he does not know the particular friendship that was between capt. Coote and me, and what instances he can give of it?

LORD HIGH STEWARD—You are to consider, Sir, though you are not upon your oath you are in a great court, and under no less restriction to testify the truth, and nothing but the truth: You hear what my noble lord asks you.

COLONEL STANHOPE—My lord, I have known my

ord of Warwick and capt. Coote for about a twelvemonth, and I did perceive that they did always profess a great kindness for one another.

Earl of Warwick—I desire to know of him, whether he observed any particular friendship between capt. Coote and me, much about the time of this business?

Colonel Stanhope—About eight or ten days before this unhappy accident, I went to wait upon my lord of Warwick twice at his lodgings: Once I found capt. Coote there, one of them was in bed, and the other was dressing of himself; I thought they were very good friends that were so familiar, and I had good reason to think so, because of that familiarity: Both the times that I was there, when I found them together, was within eight days before the accident happened.

Earl of Warwick—The next witness I shall call will be Mr. Disney.

Attorney-General—But before colonel Stanhope goes, I desire to ask him this question, whether he did never hear or know of any unkindness between my lord of Warwick and capt. Coote?

Colonel Stanhope—No, indeed I did not; I always thought them to be very good friends.

Lord High Steward—Will your lordship go on to your next witness?

Earl of Warwick—Yes, my lord, there he is, Mr. Disney; I desire he may be asked what he knows of any expressions of kindness and friendship between me and capt. Coote.

Disney spoke to Lord Warwick lending Coote 100 guineas towards the price of his commission;

he had observed great kindness between the two, and had several times seen Lord Warwick pay Coote's reckoning.

Colonel Whiteman was then called. He had constantly seen Lord Warwick and Coote together; they dined together almost every day for half a year's time almost; and as to this time, when this business had happened, I went to my lord of Warwick, being sent for by him, and found him at a private lodging, where he expressed a great deal of concern for the death of his dear friend Mr. Coote; and he shewed me the wound he had received in his hand, and he desired he might be private, and he told me he believed people would make worse of it than it was, because he did not appear; but he did but intend to keep himself out of the way till he could be tried; and I took what care I could to get him a convenience to go to France.

Attorney-General—Pray, what reason did he give for his going away?

Colonel Whiteman—The king being at that time out of England, and so the parliament not sitting, he said he did not love confinement, and had rather be in France till the parliament should meet, and he might have a fair trial, which he thought he should best have in this House.

He had never seen any unkindness or quarrel between them.

Edmund Raymund, Lord Warwick's steward, knew of the loan of 100 guineas by him to Coote, and provided the money paid on that occasion.

Lord Warwick then stated that he wished to call French as a witness, and desired that counsel might be heard on his behalf as to whether he could be guilty of the death of a man on whose side he was fighting equally with those who were fighting on the other side, and who had already been convicted of manslaughter.

After a brief discussion, it was decided that counsel should be heard on the question whether French was a competent witness. The facts were that he had been indicted for murder, and convicted of manslaughter; he claimed the benefit of clergy,[1] which was allowed him; the

[1] Benefit of clergy was originally the right of the clergy to be exempt from the jurisdiction of the lay courts, and to be handed over to the ordinary to make 'purgation.' This the accused clerk did by swearing to his own innocence and producing twelve compurgators who swore to the same effect. He was then 'usually acquitted' by a jury of twelve clerks; but otherwise he was degraded and put to penance. The right itself was gradually restricted: partly by a construction of the Statute of Westminster the First (1275), by which it was held to be necessary that the clerk should be indicted before he could claim his benefit; partly by the practice prevailing in the time of Henry VI. that he must first be convicted. Meanwhile its scope had been largely increased by its extension in 1350 to all lay clerks, who were taken to mean persons capable of reading. The law, however, which was applicable to the present case depended on two statutes, 4 Henry VII., c. 13, and 18 Elizabeth, c. 7; by the former any person allowed his clergy was to be branded, and was not to be allowed it again unless he was actually in orders; by the latter purgation was abolished, and any person taking benefit of clergy was to be

burning on his hand was respited, and a pardon remitting the burning altogether had been delivered to the Lord High Steward under the Privy Seal, but had not passed the Great Seal.

discharged from prison subject to the power of the judge to imprison him for a year. By a statute of Edward VI. also, a peer ('though he cannot read') was allowed a privilege equivalent to benefit of clergy, but was not to be branded.

A certain number of offences were excluded from benefit of clergy during earlier times, and a great number during the eighteenth century, at the beginning of which the privilege was extended to all prisoners. Finally, the system was abolished in 1827. How this system, occupying as it did an important position in the criminal procedure of this country till a comparatively modern date, impresses a lawyer of the present day, may best be described in the words of Sir James Stephen:—'Of this branch of the law, Blackstone characteristically remarks that the English legislature "in the course of a long and laborious process, extracted by noble alchemy rich medicines out of poisonous ingredients." According to our modern views it would be more correct to say that the rule and the exception were in their origin equally crude and barbarous, that by a long series of awkward and intricate changes they were at last worked into a system which was abolished in a manner as clumsy as that in which it was constructed' (*History of the Criminal Law*, vol. i. p. 468). . . . . 'The result of this was to bring about, for a great length of time, a state of things which must have reduced the administration of justice to a sort of farce. Till 1487 any one who knew how to read might commit murder as often as he pleased, with no other result, than that of being delivered to the ordinary to make his purgation, with the chance of being delivered to him *absque purgatione*. That this should have been the law for several centuries seems hardly credible, but there is no doubt that it was. Even after 1487, a man who could read could commit murder once with no other punish-

Lord Warwick had accordingly to maintain that French was a good witness without having been burnt on his hand, or having been pardoned.

The Attorney-General first proceeded to argue that an allowance of clergy did not make a felon convict a competent witness.[1] It did not discharge him from his offence, set him *rectus in curia*, and 'make him in all respects a person fit to have the benefit and privileges of a "probus et legalis homo"' till he had passed through those methods of setting himself right in the eye of the law, that the law had prescribed. The burning in the hand under the statute of Henry VII. was not a punishment; it only showed that the branded person was not to have his clergy again. Purgation was abolished by the statute of Elizabeth, but satisfaction was not made to the law, the convict was not fully discharged from its operation, and his credit was not restored, till he was branded or pardoned. Till then 'the conviction remains upon him,' and he was not capable of being a witness.

The Solicitor-General, Sir John Hawles,[2] fol-

ment than that of having M. branded on the brawn of his left thumb, and if he was a clerk in orders he could, till 1547, commit any number of murders apparently without being branded more than once' (*Ibid.*, vol. i. p. 462).

[1] Convicted felons were incompetent as witnesses till the passing of Lord Denman's Act in 1843.

[2] Sir John Hawles (1645-1716) was born in Salisbury of a Dorsetshire family. He was educated at Winchester and Queen's College, Oxford. In 1689 he sat in the House of

lowed to the same effect, and, by the order of the Court *Powys*[1] was then heard on behalf of the prisoner. He agreed with the Attorney-General that the branding under the statute of Henry VII. was only for the purpose of showing that the branded man has had his clergy once, and was not a punishment; the punishment still remained to be inflicted by the process of purgation. But purgation was abolished after the Reformation by the statute of Elizabeth 'because it was only an outward appearance and shew of purgation, and was often the occasion of very great perjuries.' The Court had power to imprison the convicted man for a year; but that was not any more a punishment and a means of restoring a man to credit than was the branding.[2]

Commons for Old Sarum and succeeded Sir Thomas Trevor as Solicitor-General in 1695 and so remained till 1702. He afterwards represented various western boroughs in Parliament, most of them Cornish. He was one of the managers of Sacheverell's impeachment in 1710. He died at Upwinborne.

[1] Sir Thomas Powys (1649-1719), of a Shropshire family, was educated at Shrewsbury, and was called in 1673. He became Solicitor-General in 1686, and as a supporter of the dispensing power became Attorney-General in 1687. As such he conducted the prosecution of the Seven Bishops. He frequently appears for the defence in State Trials during the reign of William III. He represented Ludlow in Parliament from 1701 to 1713, was made a Serjeant at the beginning of Anne's reign, and a Judge of the Queen's Bench in 1713. He was, however, removed from the bench on the accession of George I.

[2] To a modern practitioner to whom benefit of clergy is

'What we insist on is this, that the allowance of clergy sets him right in court, since purgation is abolished, and is the same thing as if he had undergone the ceremonial parts of a formal purgation'; the prisoner was to have the same benefit of his clergy as purgation would have given him before the statute, and on being allowed his clergy is to be in the same condition as if he had undergone purgation or been pardoned. The respiting of the burning of the hand till the king's pardon could be obtained was not to put him in a worse condition than he would have been in had he been actually burnt. Cases were quoted, one of which was afterwards fairly distinguished, and it was urged that the burning was only a condition precedent to the accused getting out of prison, not to his being restored to his credit.

Serjeant Wright replied for the Crown. He admitted that a pardon would restore a convict to credit as a witness, and that an allowance of clergy, followed by a burning of the hand, would have the same effect: now that purgation was abolished, the burning had taken its place; 'that is the very terms of the statute on which

merely an archæological puzzle, it would seem that the proper argument was that the imprisonment was a punishment, and that as French had not been imprisoned he was quit of the law; but two centuries make a great deal of difference in arguments on points of law.

he is to be discharged; that must actually be done before he can be put into the same condition that he was in before the conviction, and consequently make him capable of being a witness.' One of the cases quoted by Powys was distinguished, and Hale was quoted to support the argument for the Crown.

Lord Chief-Justice Treby[1] was then called on for his opinion, and gave it that French was not a competent witness. He had not yet actually been pardoned, for pardons were not operative till they had passed the Great Seal. By his conviction he had forfeited his liberty, his power of purchasing chattels or holding land, and his credit.

These losses formerly might be restored by purgation; but purgation was now replaced by burning in the hand. The imprisonment under the statute was not a necessary condition to a restoration of credit, because it was 'a collateral and a new thing'; the party was not

[1] Sir George Treby (1644-1700), the son of a Devon gentleman, entered Exeter College in 1661, and was called in 1671. He represented his native town of Plympton in the House of Commons in both Parliaments in 1679, and was a manager in the impeachment of Lord Stafford. He succeeded Jeffreys as Recorder of London in 1680, but was removed after the success of the *Quo Warranto* proceedings. He sat in the Oxford Parliament of 1681, and resumed his seat as Recorder after the arrival of the Prince of Orange. He afterwards re-entered Parliament, succeeded Pollexfen as Solicitor-General in 1689, as Attorney-General in the same year, and as Lord Chief-Justice of the Common Pleas in 1692.

imprisoned 'by virtue of his conviction, but by a fresh express order of the judges, made upon the heinousness of the circumstances appearing on the evidence. They may, and generally do, forbear to commit at all; and when they do, it may be for a month or two, at their discretion.' In any case the burning was a condition precedent to a restoration to credit. 'To me the law is evident. A peer shall have this benefit without either clergy or burning. A clerk in orders, upon clergy alone, without burning. A lay-clerk, not without both.'

Lord Chief-Baron Ward[1] and *Nevill, J.*,[2] expressed themselves as of the same opinion; and it was decided that French should not be admitted as a witness.

[1] Edward Ward was called in 1670, and was engaged to assist Lord Russell in his trial. He was a candidate for the office of Sheriff of London in the famous election of 1683 (*ante*, pp. 3, 15). He refused a judgeship at the Revolution; became Attorney-General in 1693, and Chief Baron in 1695. He died in 1714. He was an ancestor of the late Mr. G. Ward Hunt.

[2] Sir Edward Nevill was called in 1658. He was knighted in 1681, on presenting an address to Charles II. as Recorder of Bath. He became Serjeant in 1684, and a Baron of the Exchequer in 1685. He was dismissed six months afterwards for refusing to support the royal assumption of the dispensing power. Fosse gives a striking extract from his evidence before Parliament in 1689, to show how the power of the Executive was actually brought to bear on the Stewart judges. He was restored to his office after the Revolution, removed to the Common Pleas in 1691, and died in 1705.

It was then suggested that counsel should be heard on the point whether, supposing that Lord Warwick had been on Coote's side in the fight, he was guilty of his death; but it was decided that as there was still a question whether the facts were as alleged this could not be done.

Lord Warwick was then invited to sum up his evidence, 'which is your own work, as not being allowed counsel as to matter of fact,' and to make any observations he liked. He preferred, however, to say nothing.

The Solicitor-General then proceeded to sum up for the Crown, and since he could not be heard by some lords at the upper end of the house, the *Duke of Leeds* moved either that 'any person that has a stronger voice should sum up the evidence,' or that 'you will dispense with the orders of the house so far, as that Mr. Solicitor may come to the clerk's table, or some other place within the house, where he may be heard by all.' *The Earl of Rochester* opposed the second alternative on the ground that 'in point of precedent many inconveniences' would occur were such a course adopted.

The Earl of Bridgewater suggested that the difficulty might be met by sending the guard to clear the passages about the court, which was accordingly done, apparently with success.

The Solicitor-General then continued his summing up the evidence; his only original comment

on the case being that as there was no evidence as to whose hand it was by which Coote was wounded, 'until that can be known, every person that was there must remain under the imputation of the same guilt, as having a hand, and contributing to his death.'

Then the lords went back to their own house in the same order they came into the court in Westminster Hall, and debated the matter among themselves, what judgment to give upon the evidence that had been heard; and in about two hours' time they returned again into the court, erected upon a scaffold in Westminster-hall; and after they were seated in their places, the Lord High Steward being seated in his chair before the throne, spoke to the Lords thus:

LORD HIGH STEWARD—Will your lordships proceed to give your judgment?

LORDS—Ay, Ay.

Then the Lord High Steward asked this question of every one of the lords there present, beginning with the puisne baron, which was the lord Bernard.

LORD HIGH STEWARD—My lord Bernard, is Edward Earl of Warwick guilty of the felony and murder whereof he stands indicted, or not guilty?

The lord Bernard stood up in his place uncovered, and laying his right hand upon his breast pronounced his judgment thus:

LORD BERNARD—Not Guilty of murder, but Guilty of manslaughter, upon my honour.

The same question was asked severally of all the lords, who in the same form delivered the same opinion.

Then the Lord High Steward reckoned up the number of peers present, and the opinions that were given, and announced that there were 93 present, and that they had all acquitted lord Warwick of murder, but had found him guilty of manslaughter. Lord Warwick was then called in, the judgment was announced to him, and he was asked what he had to say why judgment of death should not be pronounced against him according to law. And he claimed the benefit of his peerage, under the statute of Edward the 6th.

LORD HIGH STEWARD—My lord, your lordship has demanded the benefit of your peerage upon the statute of Edward the 6th, and you must have it by law; but I am directed by their lordships to acquaint you that you cannot have the benefit of that statute twice; therefore, I am likewise directed by their lordships to say that they hope you will take a more than ordinary care of your behaviour for the future, that so you may never hereafter fall into such unfortunate circumstances as you have been now under; my lords hope this will be so sensible a warning, that nothing of this kind will ever happen to you again; your lordship is now to be discharged.

LORD HIGH STEWARD—Is it your lordships' pleasure to adjourn to the House of Lords?

LORDS—Ay, Ay.

LORD HIGH STEWARD—This House is adjourned to the House of Lords.

Then the lords went in procession, in the same order that they came into the court.

The next day Lord Mohun was tried on a similar indictment before the same court. And

most of the same witnesses having given the same evidence again, he was acquitted and discharged. He then expressed himself thus:

Lord Mohun—My lords, I do not know which way to express my great thankfulness and acknowledgment of your lordships' great honour and justice to me; but I crave leave to assure your lordships, that I will endeavour to make it the business of the future part of my life, so to behave myself in my conversation in the world, as to avoid all things that may bring me under any such circumstances, as may expose me to the giving your lordships any trouble of this nature for the future.

Then proclamation was made dissolving the Commission, and the Court adjourned.

As is well known, the duel described in this trial is the original of that described in *Esmond* between Lord Castlewood and Lord Mohun; it may therefore be of interest to transcribe a few passages out of the latter work, premising only that there seems to be some faint relationship between Captain Macartney, Lord Mohun's second in his duel with Lord Castlewood, and the Lord Macartney who afterwards assisted him in the same capacity in his final meeting with the Duke of Hamilton. Lord Castlewood, as will be remembered, had come up to London to fight Lord Mohun, really on account of his relations with Lady Castlewood, nominally as the result of a quarrel at cards, which it was arranged

should have all the appearance of taking place. Lord Castlewood, Jack Westbury, and Harry Esmond all meet together at the 'Trumpet,' in the Cockpit, Whitehall.

When we had drunk a couple of bottles of sack, a coach was called, and the three gentlemen went to the Duke's Playhouse, as agreed. The play was one of Mr. Wycherley's—*Love in a Wood*. Harry Esmond has thought of that play ever since with a kind of terror, and of Mrs. Bracegirdle, the actress who performed the girl's part in the comedy. She was disguised as a page, and came and stood before the gentlemen as they sat on the stage, and looked over her shoulder with a pair of arch black eyes, and laughed at my lord, and asked what ailed the gentleman from the country, and had he had bad news from Bullock fair?

Between the acts of the play the gentlemen crossed over and conversed freely. There were two of Lord Mohun's party, Captain Macartney, in a military habit, and a gentleman in a suit of blue velvet and silver, in a fair periwig with a rich fall of point of Venice lace—my Lord the Earl of Warwick and Holland. My lord had a paper of oranges, which he ate, and offered to the actresses, joking with them. And Mrs. Bracegirdle, when my lord Mohun said something rude, turned on him, and asked him what he did there, and whether he and his friends had come to stab anybody else, as they did poor Will Mountford? My lord's dark face grew darker at this taunt, and wore a mischievous, fatal look. They that saw it remembered it, and said so afterward.

When the play was ended the two parties joined

company; and my Lord Castlewood then proposed that they should go to a tavern and sup. Lockit's, the 'Greyhound,' in Charing Cross was the house selected. All three marched together that way, the three lords going a-head.'

'At the 'Greyhound' they play cards, and Esmond tries in vain to quarrel with Mohun himself.

My Lord Mohun presently snuffed a candle. It was when the drawers brought in fresh bottles and glasses and were in the room—on which my Lord Viscount said, 'The Deuce take you, Mohun, how damned awkward you are. Light the candle, you drawer.'

'Damned awkward is a damned awkward expression, my lord,' says the other. 'Town gentlemen don't use such words—or ask pardon if they do.'

'I 'm a country gentleman,' says my Lord Viscount.

'I see it by your manner,' says my Lord Mohun. 'No man shall say damned awkward to me.'

'I fling the words in your face, my lord,' says the other; 'shall I send the cards too?'

'Gentlemen, gentlemen! before the servants?' cry out Colonel Westbury and my Lord Warwick in a breath. The drawers go out of the room hastily. They tell the people below of the quarrel upstairs.

'Enough has been said,' says Colonel Westbury. 'Will your lordships meet to-morrow morning?'

'Will my Lord Castlewood withdraw his words?' asks the Earl of Warwick.

'My lord Castlewood will be —— first,' says Colonel Westbury.

'Then we have nothing for it. Take notice, gentlemen, there have been outrageous words—reparation asked and refused.'

'And refused,' says my Lord Castlewood, putting on his hat. 'Where shall the meeting be? and when?'

'Since my lord refuses me satisfaction, which I deeply regret, there is no time so good as now,' says my Lord Mohun. 'Let us have chairs, and go to Leicester Field.'

'Are your lordship and I to have the honour of exchanging a pass or two?' says Colonel Westbury, with a low bow to my Lord of Warwick and Holland.

'It is an honour for me,' says my lord, with a profound congée, 'to be matched with a gentleman who has been at Mons and Namur.'

'Will your Reverence permit me to give you a lesson?' says the captain.

'Nay, nay, gentlemen, two on a side are plenty,' says Harry's patron. 'Spare the boy, Captain Macartney,' and he shook Harry's hand for the last time, save one, in his life.

At the bar of the tavern all the gentlemen stopped, and my Lord Viscount said, laughing, to the bar-woman, that those cards set people sadly a-quarrelling; but that the dispute was over now, and the parties were all going away to my Lord Mohun's house, in Bow Street, to drink a bottle more before going to bed.

A half-dozen of chairs were now called, and the six gentlemen stepping into them, the word was privately given to the chairmen to go to Leicester Field, where the gentlemen were set down opposite the 'Standard Tavern.' It was midnight, and the town was a-bed by this time, and only a few lights in the windows of the

houses; but the night was bright enough for the unhappy purpose which the disputants came about; and so all six entered into that fatal square, the chairmen standing without the railing and keeping the gate, lest any persons should disturb the meeting.

All that happened there hath been matter of public notoriety, and is recorded, for warning to lawless men, in the annals of our country. After being engaged for not more than a couple of minutes, as Harry Esmond thought (though being occupied at the time with his own adversary's point, which was active, he may not have taken a good note of time) a cry from the chairmen without, who were smoking their pipes, and leaning over the railings of the field as they watched the dim combat within, announced that some catastrophe had happened, which caused Esmond to drop his sword and look round, at which moment his enemy wounded him in the right hand. But the young man did not heed this hurt much, and ran up to the place where he saw his dear master was down.

My Lord Mohun was standing over him.

'Are you much hurt, Frank?' he asked in a hollow voice.

'I believe I'm a dead man,' my lord said from the ground.

'No, no, not so,' says the other; 'and I call God to witness, Frank Esmond, that I would have asked your pardon, had you but given me a chance. In—in the first cause of our falling out, I swear that no one was to blame but me, and—and that my lady——'

'Hush!' says my poor Lord Viscount, lifting himself on his elbow and speaking faintly. ''Twas a dispute about the cards—the cursed cards. Harry, my boy, are you wounded too? God help thee! I loved thee,

Harry, and thou must watch over my little Frank—and —and carry this little heart to my wife.'

And here my dear lord felt in his breast for a locket he wore there, and, in the act, fell back fainting.

We were all at this terrified, thinking him dead; but Esmond and Colonel Westbury bade the chairmen come into the field; and so my lord was carried to one Mr. Limes, a surgeon, in Long Acre, who kept a bath, and there the house was wakened up, and the victim of this quarrel carried in.

SPENCER COWPER AND OTHERS

VOL. II.

SPENCER COWPER AND OTHERS

SPENCER COWPER,[1] a barrister; Ellis Stephens and William Rogers, attorneys; and John Marston, a scrivener, were indicted at the Hertford Summer Assizes in 1699 for the murder of Sarah Stout, on the 13th of the previous March. They were tried at the same Assizes, before Baron Hatsell,[2] on the 16th of July.

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[1] Spencer Cowper (1669-1727) was the younger brother of Earl Cowper, who was the first Lord Chancellor of Great Britain. He was educated at Westminster, and made Controller of the Bridge House Estates in 1690. At the time of this trial his brother was the member for Hertford. In 1705 and 1708 he represented Beeralston in Parliament; he was one of the managers in Sacheverell's trial, and lost his seat in consequence, but was afterwards elected for Truro in 1711. In 1714 he became Attorney-General to the Prince of Wales, and in 1717 Chief-Justice of Chester. On the accession of George the Second he was made Attorney-General of the Duchy of Chester, and a Judge of the Common Pleas in 1727. He died the same year. He was the grandfather of William Cowper the poet.

[2] Sir Henry Hatsell (1641-1714) was the son of an active Roundhead who sat in the House of Commons during the Commonwealth. He was educated at Exeter College, was called to the Bar in 1667, and became a Baron of the Exchequer in 1697. The present trial was the most conspicuous with

The indictment alleged that they had murdered Sarah Stout by strangling her, and had then thrown her body into the Priory River to conceal the body. To this, all the prisoners pleaded Not Guilty.

Jones appeared for the prosecution; Cowper defended himself, and practically the other prisoners as well.

The prisoners agreed that Cowper's challenges should be taken to be the challenges of all of them; and enough jurors were then challenged to exhaust the panel. Accordingly, after some discussion, Jones was called upon to show cause for his challenges.

CLERK OF ARRAIGNS—Call Daniel Clarke.

HATSELL, BARON—Mr. Jones, if you can say any juryman hath said anything concerning the cause, and given his verdict by way of discourse, or showed his affection one way or the other, that would be good cause of challenge.

JONES—My lord, then we should keep you here till to-morrow morning.

HATSELL, BARON—If there hath been any great friendship between any juryman and the party, it will look ill if it is insisted upon.

COWPER—My lord, I do not insist upon it, but I profess I know of no friendship, only that Mr. Clarke in elections hath taken our interest in town; I know

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which he was connected, from which fact it may be supposed that he never enjoyed a very high reputation. He was removed from the Bench soon after Queen Anne's accession.

I have a just cause, and I am ready to be tried before your lordship and any fair jury of the county; therefore I do not insist upon it.

A jury was then sworn, and *Jones* opened the case for the prosecution.

JONES. May it please your lordship, and you gentlemen that are sworn, I am of counsel for the king in this cause, and it is upon an indictment by which the gentlemen at the bar stand accused for one of the foulest and most wicked crimes almost that any age can remember; I believe in your county you never knew a fact of this nature; for here is a young gentlewoman of this county strangled and murdered in the night time. The thing was done in the dark, therefore the evidence cannot be so plain as otherwise might be.

After she was strangled and murdered, she was carried down into a river to stifle the fact, and to make it supposed she had murdered herself; so that it was indeed, if it prove otherwise, a double murder, a murder accompanied with all the circumstances of wickedness and villainy that I remember in all my practice or ever read of.

This fact, as it was committed in the night time, so it was carried very secret, and it was very well we have had so much light as we have to give so much satisfaction; for we have here, in a manner, two trials; one to acquit the party that is dead, and to satisfy the world, and vindicate her reputation, that she did not murder herself, but was murdered by other hands. For my part, I shall never, as counsel in the case of blood, aggravate; I will not improve

or enlarge the evidence at all; it shall be only my business to set the fact as it is, and to give the evidence, and state it as it stands here in my instructions.

My lord, for that purpose, to lead to the fact, it will be necessary to inform you, that upon Monday the 13th of March, the first day of the last assizes here, Mr. Cowper, one of the gentlemen at the bar, came to this town, and lighted at Mr. Barefoot's house, and staid there some time, I suppose to dry himself, the weather being dirty, but sent his horse to Mrs. Stout's, the mother of this gentlewoman. Some time after he came thither himself, and dined there, and staid till four in the afternoon; and at four, when he went away, he told them he would come and lodge there that night, and sup.

According to his word he came there, and had the supper he desired; after supper Mrs. Stout, the young gentlewoman, and he sat together till near eleven o'clock. At eleven o'clock there was orders given to warm his bed, openly to warm his bed in his hearing. The maid of the house, gentlemen, upon this went up stairs to warm his bed, expecting the gentleman would have come up and followed her before she had done; but it seems, while she was warming his bed, she heard the door clap together; and the nature of that door is such, that it makes a great noise at the clapping of it to, that any body in the house may be sensible of any one's going out. The maid upon this was concerned, and wondered at the meaning of it, he promising to lie there that night; she came down, but there was neither Mr. Cowper nor Mrs. Stout; so that we suppose, and for all that we can find and learn, they must go out together. After their going out, the maid and mother

came into the room; and the young gentlewoman not returning, nor Mr. Cowper, they sat up all night in the house, expecting what time the young gentlewoman would return. The next morning, after they had sat up all night, the first news of this lady was, that she lay floating and swimming in water by the mill dam. Upon that there was several persons called; for it was a surprize how this should come to pass. There she lay floating with her petticoats and apron, but her night rail and morning gown were off, and one of them not found till some time after; and the maid will give you an account how it came to be found.

This made a great noise in the country; for it was very extraordinary, it happening that from the time the maid left Mr. Cowper and this young gentlewoman together, she was not seen or heard of till next morning, when she was found in this condition, with her eyes broad open, floating upon the water.

When her body came to be viewed, it was very much wondered at; for in the first place, it is contrary to nature, that any persons that drown themselves should float upon the water. We have sufficient evidence, that it is a thing that never was; if persons come alive into the water, then they sink; if dead, then they swim; that made some more curious to look into this matter. At first, it was thought that such an accident might happen, though they could not imagine any cause for this woman to do so, who had so great prosperity, had so good an estate, and had no occasion to do an action upon herself so wicked and so barbarous, nor cannot learn what reason she had to induce her to such a thing. Upon view of the body, it did appear there had been violence used to

the woman; there was a crease round her neck, she was bruised about her ear; so that it did seem as if she had been strangled either by hands or a rope.

Gentlemen, upon the examination of this matter, it was wondered how this matter came about, it was dark and blind. The coroner at that time, nor these people, had no evidence given, but the ordinary evidence, and it passed in a day. We must call our witnesses to this fact, that of necessity you must conclude she was strangled, and did not drown herself. If we give you as strong a proof as can be upon the nature of the fact, that she was strangled, then the second matter under that enquiry will be, to know who, or what persons, should be the men that did the fact. I told you before, it was, as all wicked actions are, a matter of darkness, and done in secret to be kept as much from the knowledge of men as was possible.

Truly, gentlemen, as to the persons at the bar, the evidence of the fact will be very short, and will be to this purpose.

Mr. Cowper was the last man unfortunately in her company; I could wish he had not been so with all my heart; it is a very unfortunate thing, that his name should upon this occasion be brought upon the stage: but then, my lord, it was a strange thing, here happens to be three gentlemen; Mr. Marson, Mr. Rogers, and Mr. Stephens. As to these three men, my lord, I do not hear of any business they had here, unless it was to do this matter, to serve some interest or friend that sent them upon this message; for, my lord, they came to town (and in things of this nature it is well we have this evidence; but if we had not been straightened in time, it would have brought out

more; these things come out slowly), these persons, Mr. Stephens, Mr. Rogers, and Mr. Marson, came to town here on the thirteenth of March last, the assize day. My lord, when they came to town, they came to an house, and took lodgings at one Gurrey's; they took a bed for two, and went out of their lodging, having taken a room with a large bed in it; and afterwards they went to the Glove and Dolphin, and then about eight o'clock one Marson came to them there; in what company they came, your lordship and the jury will know by and by; they staid there, my lord, at the Glove from eight to eleven, as they say. At eleven these three gentlemen came all into their lodging together to this Gurrey's. My lord, when they came in, it was very observable amongst them, unless there had been a sort of fate in it, first, That they should happen to be in the condition they were; and, secondly, fall upon the discourse they did at that time; for, my lord, they called for fire, and the fire was made them; and while the people of the house were going about, they observed and heard these gentlemen talk of Mrs. Sarah Stout; that happened to be their discourse; one said to the other, Marson, she was an old sweetheart of yours: Ay, saith he, but she cast me off, but I reckon by this time a friend of mine has done her business. Another piece of discourse was, I believe a friend of mine is even with her by this time. They had a bundle of linen with them, but what it was is not known, and one takes the bundle and throws it upon the bed; well, saith he, her business is done, Mrs. Sarah Stout's courting days are over; and they sent for wine, my lord; so after they had drank of the wine they talked of it, and one pulled

out a great deal of money; saith one to another, what money have you spent to-day? Saith the other, thou hast had 40 or 50 pounds for thy share: Saith the other, I will spend all the money I have, for joy the business is done.

My lord, this discourse happened to be among them; which made people of the house consider and bethink themselves; when the next day they heard of this Mrs. Stout's being found in the water, this made them recollect and call to mind all these discourses.

My lord, after these gentlemen had staid there all night, next morning, truly, it was observed (and I suppose some account will be given of it) that Mr. Cowper and they did meet together, and had several discourses, and that very day went out of town; and I think as soon as they came to Hoddesden, made it all their discourse and business to talk of Mrs. Stout. My lord, we will call our witnesses, and prove all these facts that I have opened to your lordship; and then I hope they will be put to give you some account how all these matters came about.

Call Sarah Walker (who was sworn).

JONES—Mrs. Walker, pray give an account to my lord and the jury, of Mr. Cowper's coming to your house the 13th of March, and what was done from his coming there at night to his going out?

WALKER—May it please you, my lord, on Friday before the last assizes, Mr. Cowper's wife sent a letter to Mrs. Stout, that she might expect Mr. Cowper at the assize time; and therefore we expected Mr. Cowper at that time, and accordingly provided; and as he came in with the judges, she asked him if he would

alight? He said no; by reason I come in later than usual, I will go into the town and show myself, but he would send his horse presently. She asked him, how long it would be before he would come, because they would stay for him? He said, he could not tell, but he would send her word; and she thought he had forgot, and sent me down to know, whether he would please to come? He said, he had business, and he could not come just then; but he came in less than a quarter of an hour after, and dined there, and he went away at four o'clock: and then my mistress asked him, if he would lie there? And he answered yes, and he came at night about 9; and he sat talking about half an hour, and then called for pen, ink and paper, for that, as he said, he was to write to his wife; which was brought him, and he wrote a letter; and then my mistress went and asked him, what he would have for supper? He said milk, by reason he had made a good dinner; and I got him his supper, and he eat it; after she called me in again, and they were talking together, and then she bid me make a fire in his chamber; and when I had done so, I came and told him of it, and he looked at me, and made me no answer; then she bid me warm the bed, which accordingly I went up to do as the clock struck eleven, and in about a quarter of an hour I heard the door shut, and I thought he was gone to carry the letter, and staid about a quarter of an hour longer, and came down, and he was gone and she; and Mrs. Stout the mother asked me the reason why he went out when I was warming his bed? and she asked me for my mistress, and I told her I left her with Mr. Cowper, and I never saw her after that nor did Mr. Cowper return to the house.

She sat up all night; she next saw Sarah Stout when she had been taken out of the water the next morning. On being pressed, she was certain that it was a quarter after eleven by their clock when Cowper left the house; their clock was half an hour faster than the town clock.

COWPER—Pray, what account did you give as to the time before my lord chief-justice Holt?

WALKER—I gave the account that it was eleven, or quarter of an hour after.

COWPER—In her depositions there is half an hour's difference; for then she said it was half an hour after ten.

HATSELL, BARON—Which clock was earliest, yours or the town clock?

WALKER—Ours was half an hour faster than theirs.

COWPER—How came you to know this?

WALKER—By reason that dinner was dressed at the cook's, and it was ordered to be ready by two o'clock, and it was ready at two by the town clock, and half an hour after two by ours.

COWPER—When you came down and missed your mistress, did you enquire after her all that night?

WALKER—No, Sir, I did not go out of the doors; I thought you were with her, and so I thought she would come to no harm.

COWPER—Here is a whole night she gives no account of. Pray, mistress, why did not you go after her?

WALKER—My mistress would not let me.

COWPER—Why would she not let you?

WALKER—I said I would see for her? No, saith she, by reason if you go and see for her, and do not

ind her, it will make an alarm over the town, and here may be no occasion.

COWPER—Did your mistress use to stay out all night?

WALKER—No, never.

COWPER—Have not you said so?

WALKER—I never said so in my life.

COWPER—Pray, Mrs. Walker, did you never take notice that your mistress was under melancholy?

WALKER—I do not say but she was melancholy; she was ill for some time; and I imputed it to her illness, and I know no other cause.

COWPER—Have you not often told people that your mistress was a melancholy person, upon your oath?

WALKER—I have said she hath been ill, and that made her melancholy.

The witness admitted that she had bought poison twice within the last six months; she bought it at her own instance, and not at the order of Mrs. Stout, or of Mrs. Crooke. She asked for white mercury. She bought it to poison a dog with; the dog used to come about the house and do mischief. It was another maid who gave it to the dog; she swore at the inquest that she had given it because she had seen it given; it was given in warm milk which did not seem discoloured.

HATSELL, BARON—You said just now your mistress was ill, and that made her melancholy; what illness was it?

WALKER—My lord, she had a great pain in her head.

HATSELL, BARON—How long had she been troubled with it?

WALKER—Ever since last May was twelve months was the beginning of it.

JONES—Did you ever find her in the least inclined to do herself a mischief?

WALKER—No, I never did.

COWPER—You bought poison twice, did you give all the poison you bought to the dog?

WALKER—Yes.

COWPER—The first and the last?

WALKER—Yes, the whole.

COWPER—How much did you buy?

WALKER—I am not certain how much I bought.

COWPER—Pray, what mischief did it do the dog?

WALKER—I cannot tell, he may be alive till now for aught I know.

COWPER—What mischief did the dog do?

WALKER—A great deal, he threw down several things and broke them.

JONES—Did Mr. Cowper, upon your oath, hear Mistress Stout give you order to make his fire, and warm his bed?

WALKER—He knows best, whether he heard it or no; but he sat by her when she spake it.

JONES—Did she speak of it so as he might hear?

WALKER—Yes, she did; for he was nearer than I.

JONES—And did not he contradict it?

WALKER—Not in the least.

JONES—Was it the old or young woman that gave you the order?

WALKER—The young woman.

COWPER—Pray did the dog lap it, or did you put it down his throat, upon your oath?

WALKER—No, he lapt it, upon my oath.

JONES—Did Mr. Cowper send for his horse from your house the next day?

WALKER—I cannot say that; I was not in the way.

JONES—Did he come to your house afterwards?

WALKER—No, I am sure he did not.

JONES—Was the horse in your stable when it was sent for?

WALKER—Yes, sir.

JONES—And he did not come to your House again, before he went out of town?

WALKER—No, sir.

JONES—Do you know which way he went out of town?

WALKER—No, Sir.

HATSELL, BARON—Did Mr. Cowper use to lodge at your house at the assizes?

WALKER—No, my lord, not since I came there; the sessions before he did.

COWPER—Where did you come to invite me to dinner?

WALKER—At Mr. Barefoot's.

COWPER—Then you knew I was to lodge there?

HATSELL, BARON—Who wrote the letter on Friday, that Mr. Cowper would lodge there?

WALKER—I know not who wrote it, his wife sent it.

JONES—Did he tell you he would lodge there that night before he went away?

WALKER—When he went from dinner he said so.

James Berry could not remember exactly which day it was that Sarah Stout was found in his mill;

out he went out at six o'clock to shoot a flush of water and saw something floating in the water, and on going to see what it was, saw that it was part of her clothes. He did not see her face; no part of her body was above the water, only part of her clothes. The water might be about five foot deep and she might be about five or six inches under the water. She lay upon her side; when she was taken out her eyes were open.

JONES—Was she swelled with water?

BERRY—I did not perceive her swelled; I was amazed at it; and did not so much mind it as I should.

JONES—But you remember her eyes were staring open?

BERRY—Yes.

JONES—Did you see any marks or bruises about her?

BERRY—No.

COWPER—Did you see her legs?

BERRY—No, I did not.

COWPER—They were not above the water?

BERRY—No.

COWPER—Could you see them under the water?

BERRY—I did not so much mind it.

COWPER—Did she lie straight or double, driven together by the stream?

BERRY—I did not observe.

COWPER—Did you not observe the weeds and trumpery under her?

BERRY—There was no weeds at that time thereabouts.

JONES—Was the water clear?

BERRY—No, it was thick water.

JONES—Was there anything under her in the water to prevent her sinking?

BERRY—No, I do not know there was; she lay on her right side, and her right arm was driven between the stakes, which are within a foot of one another.

JONES—Did anything hinder her from sinking?

BERRY—Not that I saw.

COWPER—Mr. Berry, if I understand you right, you say her arm was driven between the stakes, and her head between the stakes; could you perceive her right arm, and where was her left arm?

BERRY—Within a small matter upon the water.

HATSELL, BARON—Did you see her head and arm between the stakes?

BERRY—Yes, her arm by one stake and her head by another.

JONES—Did her arm hang down or how?

BERRY—I did not mind so much as I might have done.

John Venables and *Leonard Dell* corroborated Berry's account of the position of the body, the latter asserting that the right arm did not reach to the ground. *Dell* also helped to carry the body to land, but saw no bruises.

HATSELL, BARON—When you took her out of the water, did you observe her body swelled?

DELL—We carried her into the meadow, and laid her on the bank-side, and there she lay about an hour, and then was ordered to be carried into the miller's.

HATSELL, BARON—Did you observe that any water was in the body?

DELL—None at all that I could see; but there was some small matter of froth came from her mouth and nostrils.

JURYMAN—My lord, I desire to know whether her stays were laced.

DELL—Yes, she was laced.

COWPER—How was she taken out of the water?

DELL—My lord, we stood upon the bridge, I and another man, where she lay, and he laid hold of her and took her out.

JONES—And did you not perceive she was hung?

DELL—No, my lord.

John Ulfe saw Mrs. Stout when she was taken out of the water; she lay there on one side; there was nothing at all to hold her up; she lay between a couple of stakes, but the stakes could not hold her up.

Katherine Dew, Edward Blackno, William Edmunds, William Page, William How, and John Meager all gave the same account of the position and state of the body, Dew and Ulfe adding that her shoes and stockings were not muddy.

JONES—Now, my lord, we will give an account how she was when she was stript, and they came to view the body. Call John Dimsdale, junior. (Who was sworn.)

DIMSDALE—My lord, I was sent for at night on Tuesday the last assizes.

COWPER—My lord, if your lordship pleases, I have

some physicians of note and eminency that are come down from London; I desire that they may be called into Court to hear what the surgeons say.

HATSELL, BARON—Ay, by all means.

COWPER—My lord, there is Dr. Sloane, Dr. Garth, Dr. Morley, Dr. Gilstrop, Dr. Harriot, Dr. Wollaston, Dr. Crell, Mr. William Cowper, Mr. Bartlett, and Mr. Camlin. [Who respectively appeared in Court.]

JONES—Give an account how you found Mrs. Stout.

HATSELL, BARON—You are a physician, I suppose, Sir?

DIMSDALE[1]—A surgeon, my lord. When I was sent for to Mrs. Stout's, I was sent for two or three times before I would go; for I was unwilling after I heard Mrs. Stout was drowned; for I thought with myself, what need could there be of me when the person was dead? but she still sent; and then I went with Mr. Camlin, and found a little swelling on the side of her neck, and she was black on both sides, and more particularly on the left side, and between her breasts up towards the collar-bone; and that was all I saw at that time, only a little mark upon one of her arms, and I think upon her left arm.

JONES—How were her ears?

DIMSDALE—There was a settling of blood on both sides the neck, that was all I saw at that time.

[1] This John Dimsdale was apparently the father of the first Baron Dimsdale, who inoculated Catharine of Russia and the Grand Duke Paul, her son, for smallpox in 1728. John's father was William, who accompanied William Penn to America in 1684; so that it is not clear who the Mr. Dimsdale, senior, and Dr. Robert Dimsdale of this trial were. The family is, however, one which has long been settled in Hertfordshire.

JONES—How do you think she came by it?

DIMSDALE—Truly I only gave an account just as I say now to the gentlemen at that time, I saw no more of it at that time, but about six weeks after the body was opened by Dr. Phillips——

COWPER—My lord, he is going to another piece of evidence and I would ask him——

JONES—Let us have done first; how was her ears?

DIMSDALE—There was a blackness on both ears, a settling of blood.

JONES—Call Sarah Kimpson?

HATSELL, BARON—Mr. Cowper, now you may ask him anything, they have done with him.

COWPER—I would ask him, whether he was not employed to view these particular spots he mentions at the Coroner's inquest?

DIMSDALE—I was desired to look upon the face and arms, and breast, because they said there was a settling of blood there.

COWPER—When you returned to the Coroner's inquest, what did you certify as your opinion?

DIMSDALE—I did certify that there was a settling of blood; but how it came I could not tell.

COWPER—I ask you, Sir, did not you say it was no more than a common stagnation usual in dead bodies?

DIMSDALE—I do not remember a word of it.

COWPER—Sir, I would ask you; you say the spot was about the collar-bone; was it above or below?

DIMSDALE—From the collar-bone downwards.

COWPER—Had she any circle about her neck?

DIMSDALE—No; not, upon my oath.

Sarah Kimpson saw the body examined; she

saw a great bruise behind the ear, as big as her hand, and another under her collar-bone.

JONES—Did you see nothing about her neck?

KIMPSON—Nothing round her neck; on the side of her neck there was a mark.

JONES—Was there any other part bruised?

KIMPSON—Only her left wrist, and her body was very flat and lank.

She saw the body the day it was found; it was not swollen; she did not see any water about it. She had seen a child which was drowned in the same place about ten weeks before; it was drowned at night and found the next morning; it was found at the bottom of the river, the eyes were shut, and the body was very much swelled.

Sarah Peppercorn saw the body of Sarah Stout when it was brought to Mrs. Stout's house. She saw bruises on the head and near the ear. Mrs. Stout asked her whether her daughter had been with child, and she said she had not; she was a midwife.

Elizabeth Husler was sworn.

JONES—Had you the view of the body of Mrs. Sarah Stout the day you heard she was drowned?

HUSLER—She was not drowned, my lord; I went thither and helped to pull off her clothes.

JONES—In what condition was her body?

HUSLER—Her body was very lank and thin, and no water appeared to be in it.

There was no water about her mouth and nose; there were bruises at the top of the collar-bone and upon both her ears.

Ann Pilkington saw the body, and gave the same evidence as to its general condition as the other witnesses.

COWPER—Had she any circle about her neck?

PILKINGTON—No, not that I did see.

COWPER—Pray, did you not make some deposition to that purpose that you know of?

PILKINGTON—Sir, I never did, and dare not do it.

COWPER—It was read against me in the King's Bench, and I will prove it; was not Mr. Mead with you at the time of your examination?

PILKINGTON—Yes.

COWPER—Did he not put in some words, and what were they?

PILKINGTON—Not that I know of.

COWPER—But you never swore so, upon your oath?

PILKINGTON—No, I do not believe I did; if I did it was ignorantly.

JONES—Here is her examination, it is 'cross her neck.'

Mr. Coatsworth, a surgeon, was called and deposed that in April he had been sent for, by Dr. Phillips, to come to Hertford to see the body of Mrs. Stout, who had been six weeks buried. Various parts of the body were examined; the woman had not been with child; the intestines and stomach were full of air, but there was no water in them, or the breast, or

lobes of the lungs; there was no water in the diaphragm.

Then I remember I said, this woman could not be drowned, for if she had taken in water, the water must have rotted all the guts; that was the construction I made of it then; but for any marks about the head or neck, it was impossible for us to discover it, because they were so rotten.

The inspection was made on the 28th of April, and the woman was drowned on the 13th of March. The doctor had offered to examine the skull, to see if it had been injured, 'but they did not suspect a broken skull in the case, and we did not examine it.' All the other parts were sound.

JONES—Call John Dimsdale.

COWPER—My lord, I would know, and I desire to be heard to this point; I think where the Coroner's inquest have viewed the body, and the relations have been heard, and the body buried, that it is not to be stirred afterwards for any private inspection of parties, that intend to make themselves prosecutors; but if it is to be taken up, it is to be done by some legal authority; for if it should be otherwise, any gentleman may be easily trepanned: for instance, if they should have thought fit, after the Coroner's view, to have broken the skull into a hundred pieces, this was a private view altogether among themselves. Certainly, if they intended to have prosecuted me, or any other gentleman upon this evidence, they ought to have given us notice, that we might have had some

surgeons among them, to superintend their proceedings. My lord, with submission, this ought not to be given in evidence.

HATSELL, BARON—Mr. Cowper, I think you are not in earnest; there is no colour for this objection: if they did take up the body without notice, why should not that be evidence? unless you think they had a design to forswear themselves.

COWPER—Had you a *Melius Inquirendum*, or any lawful warrant for making this inspection?

COATSWORTH—No, there was not.

HATSELL, BARON—Suppose they did an ill thing in taking up the body without some order, though I do not know any more ill in taking up that body than any other; but, however, is that any reason why we should not hear this evidence?

COATSWORTH—Mr. Camblin, sir Wm. Cowper's surgeon, was there by.

Mr. Dimsdale, senior, a surgeon, was sworn and deposed that he had been sent for on the 28th of April by Mrs. Stout, to view the body of her daughter.

Finding her head so much mortified, down to her neck, we thought all the parts were seized, and had a consultation, whether we should open her or not; but Mrs. Stout was very enraged, because a great scandal had been raised, that her daughter was with child; and she said she would have her opened to clear her reputation.

The body was examined, with the same result, that the other witness had described, no water

being found either in the stomach or the lungs.

After this we had a consultation, to consider whether she was drowned or not drowned; and we were all of opinion that she was not drowned; only Mr. Camblin desired he might be excused from giving his opinion whether she was drowned or not; but all the rest of us did give our opinions that she was not drowned.

The grounds for this opinion were the absence of water from the lungs and intestines; and this was a sign which would show whether she had been drowned or not weeks after her death. In answer to Cowper he admitted that he had never seen a body opened which had been drowned six weeks. If a body had been drowned a fortnight, the bowels would be so rotten that it would be impossible to come near it.

John Dimsdale, junior, believed that the body had not been drowned, and signed a certificate to that effect after looking at the body; he believed it, because he found no water in the body. He had seen the child that was drowned the morning after it was drowned, and had found abundance of water in the body then.

Dr. Dimsdale saw the body after it was opened, and on finding no water in the thorax or abdomen, signed the certificate. Had the woman been drowned he would have expected to find water in the thorax.

COWPER—Is it possible there should be water in the thorax according to your skill?

DIMSDALE—Yes, we did think there would have been, if she had been drowned.

He would have expected to find traces of it after six weeks.

COWPER—Pray by what passage does the water go into the thorax?

DIMSDALE—It will be very difficult for me to describe the manner here; but we should have found some in the stomach and intestines.

COWPER—Pray, sir, how should it go into the thorax?

DIMSDALE—By the lymphæduct, if carried by any means.

No water would come into a body after it was dead, but he questioned whether or not it might come into the windpipe.

COWPER—Sir, I would ask you, was you not angry that Mr. Camblin would not join with you in opinion?

DIMSDALE—No.

COWPER—Did you not tell him that you were a graduate physician, and was angry he would not join you?

DIMSDALE—Suppose I did?

HATSELL, BARON—But did you so or no?

DIMSDALE—Yes, my lord, we had some words about it.

JONES—Swear Dr. Coatsworth. (Which was done.) Now, my lord, we call these gentlemen that are doctors of skill, to know their opinions of them that

are found floating without water in them, how they came by their death.

Dr. Coatsworth—I have not seen many drowned bodies to make observation upon; but it is my opinion, that every body that is drowned, is suffocated by water passing down the windpipe into the lungs, upon respiration; and at the same time, the water pressing upon the gullet, there will be a necessity of swallowing a great part of it into the stomach; I have been in danger of being drowned myself, and I was forced to swallow a great quantity of water. If a person was drowned, and taken out immediately, as soon as the suffocation was effected, I should not wonder if there were but little water in the stomach and guts; but if it lay in the water several hours, it must be very strange if the belly should not be full of water; but I will not say, it is impossible it should be otherwise.

Cowper—I desire to know, whether this gentleman attempted to drown himself, or was in danger of being drowned by accident?

Dr. Coatsworth—It was by accident: I was passing up the ship-side, and took hold of a loose rope instead of the entering rope, which failing me, I fell into the water.

Cowper—But you struggled to save yourself from drowning?

Dr. Coatsworth—I did so; I have seen several persons that have been drowned, and they have lain several days, until by fermentation they have been raised; but I never made my observations of any persons that have been drowned above six hours.

Jones—Did you ever hear of any persons that, as soon as they were drowned, had swam above water?

DR. COATSWORTH—I have not known such a case.

COWPER—Did you ever know, Sir, a body that was otherwise killed, to float upon the water?

DR. COATSWORTH—I never made any observation of that.

HATSELL, BARON—Dr. Browne has a learned discourse, in his *Vulgar Errors*, upon this subject, concerning the floating of dead bodies; I do not understand it myself, but he hath a whole chapter about it.[1]

Then Dr. Nailor was sworn.

JONES—We ask you the same question that Dr. Coatsworth was asked, What is your opinion of dead bodies? If a body be drowned, will it have water in it or no?

DR. NAILOR—My lord, I am of opinion, that it will have a quantity if it be drowned; but if there be no water in the body, I believe that the person was dead before it was put into the water.

COWPER—I would ask the doctor one question, my lord, Whether he was not a constant voter against the interest of our family in this corporation?

DR. NAILOR—I never did come to give a vote but sir William Cowper, or his son, opposed me, and said I had no right to vote.

COWPER—I would have asked the same question of the Dimsdales, if I had remembered it; they are of another party, as this gentleman is.

HATSELL, BARON—It is not at all material, as they are witnesses. Then call Mr. Babington. (Who was sworn.)

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[1] *Vulgar Errors*, Book IV., ch. vi., 'Of Swimming and Floating.'

JONES—Pray, what is your opinion of this matter?

BABINGTON—I am of opinion, that all bodies that go into the water alive and are drowned, have water in them, and sink as soon as they are drowned, and do not rise so soon as this gentlewoman did.

COWPER—Pray, what is your profession, Sir?

BABINGTON—I am a surgeon.

COWPER—Because Mr. Jones called you doctor.

HATSELL, BARON—Did you ever see any drowned bodies?

BABINGTON—Yes, my lord, once I had a gentlewoman a patient that was half an hour under water, and she lived several hours after, and in all that time she discharged a great quantity of water; I never heard of any that went alive into the water, and were drowned, that floated so soon as this gentlewoman did; I have heard so from physicians.

HATSELL, BARON—I have heard so too, and that they are forced to tye a bullet to dead bodies thrown into the sea, that they might not rise again.

COWPER—The reason of that is, that they should not rise again, not that they will not sink without it. But I would ask Mr. Babington, whether the gentlewoman he speaks of went into the water voluntarily, or fell in by accident?

BABINGTON—By accident, but I believe that does not alter the case.

Dr. Burnet was called, and expressed an opinion that if a person jumped into the water or fell in by accident they would swallow and inhale water as long as they were alive, but not afterwards; and that they would sink.

Dr. Woodhouse expressed the same opinion.

If a person had swallowed water in drowning, signs of it would be visible some time afterwards.

JONES—Call Edward Clement. (Who was sworn.) Are not you a seaman?

CLEMENT—Yes, Sir.

JONES—How long have you been so?

CLEMENT—Man I have writ myself but six years, but I have used the sea nine or ten years.

JONES—Have you known of any men that have been killed, and thrown into the sea, or who have fallen in and been drowned? Pray tell us the difference as to their swimming and sinking.

CLEMENT—In the year '89 or '90, in Beachy fight, I saw several thrown overboard during the engagement, but one particularly I took notice of, that was my friend, and killed by my side; I saw him swim for a considerable distance from the ship; and a ship coming under our stern, caused me to lose sight of him, but I saw several dead bodies floating at the same time; likewise in another engagement, where a man had both his legs shot off, and died instantly, they threw over his legs; though they sunk, I saw his body float: likewise I have seen several men who have died natural deaths at sea, they have when they have been dead had a considerable weight of ballast and shot made fast to them, and so were thrown overboard; because we hold it for a general rule, that all men swim if they be dead before they come into the water; and on the contrary, I have seen men when they have been drowned, that they have sunk as soon as the breath was out of their bodies, and I could see no more of them. For instance, a man fell out of the

Cornwall, and sunk down to rights, and seven days afterwards we weighed anchor, and he was brought up grasping his arm about the cable, and we have observed in several cases, that where men fall overboard, as soon as their breath is out of their bodies they sink downright; and on the contrary, where a dead body is thrown overboard without weight, it will swim.

JONES—You have been in a fight; how do bodies float after a battle?

CLEMENT—Men float with their heads just down, and the small of their back and buttocks upwards; I have seen a great number of them, some hundreds in Beachy-head fight, when we engaged the French. I was in the old *Cambridge* at that time. I saw several (what number I will not be positive, but there were a great number, I cannot guess to a score) that did really swim, and I could see them float for a considerable distance.

JONES—Have you seen a shipwreck?

CLEMENT—Yes; the *Coronation*, in September 1691. I was then belonging to the *Dutchess*, under the command of captain Clement; we looked out and see them taking down their masts; we saw the men walking up and down on the right side, and the ship sink down, and they swam up and down like a shoal of fish one after another; and I see them hover one upon another and see them drop away by scores at a time; and there was an account of about nineteen that saved themselves, some by boats, and others by swimming; but there were no more saved out of the ship's complement, which was between five and six hundred, and the rest I saw sinking downright, some twenty at a time. There was a fisherman brought our

captain word, that in laying in of his nets he drew up some men close under the rocks that were drowned belonging to the *Coronation*. We generally throw in bags of ballast with them.

JONES—I suppose all men that are drowned, you sink them with weights?

CLEMENT—Formerly shot was allowed for that purpose; there used to be threescore weight of iron, but now it is a bag of ballast that is made fast to them.

JONES—Then, you take it for a certain rule, that those that are drowned sink, but those that are thrown overboard do not?

CLEMENT—Yes; otherwise why should the government be at that vast charge to allow threescore or fourscore weight of iron to sink every man, but only that their swimming about should not be a discouragement to others?

Then Richard Gin was sworn.

JONES—You hear the question; pray what do you say to it?

GIN—I was at sea a great while, and all the men that I see turned overboard had a great weight at their heels to sink them.

JONES—Then will they swim otherwise?

GIN—So they say.

JONES—Are you a seaman?

GIN—I went against my will in two fights.

JONES—Then, gentlemen of the jury, I hope we have given you satisfaction that Mrs. Stout did not drown herself, but was carried into the water after she was killed. That was the first question; for if it be true that all dead bodies when they are put into the water do swim, and the bodies that go alive into the water and are

drowned do sink, this is sufficient evidence that she came by her death not by drowning, but some other way. Now, my lord, as to the second matter, and that is to give such evidence as we have against these gentlemen at the bar. Mr. Cowper, it appears, was the last man that any one gives an account of was in her company. What became of her afterwards, or where they went, nobody can tell; but the other witnesses have given you evidence that he was the last man that was with her. I shall only give this further evidence as to Mr. Cowper, that notwithstanding all the civility and kindnesses that passed between him and this family, when the bruit and noise of this fact was spread abroad, Mr. Cowper did not come to consider and consult with old Mrs. Stout what was to be done; but he took no manner of notice of it, and the next day he rode out of town, without further taking notice of it.

Call *George Aldridge* and *John Archer.*

John Archer was sworn.

JONES—Do you know anything of Mr. Cowper's going out of town about this business of Mrs. Stout's being drowned?

ARCHER—Yes, I did see him go out of town afterwards.

JONES—Which way did he go?

ARCHER—He went the way back from the Glove; I suppose he came that way.

COWPER—What day was it I went? Is it not the way that I used to go when I go the Circuit into Essex?

ARCHER—Yes, I believe so.

COWPER—I lodged at Mr. Barefoot's, and he has a

back-door to the Glove, where my horse was, and I went the direct way into Essex, and it was Wednesday morning: What day was it you see me go?

ARCHER—It was on the Wednesday morning.

COWPER—That was the very day I went into Essex.

Then George Aldridge was sworn.

JONES—When did Mr. Cowper go out of town the last assizes?

ALDRIDGE—On Wednesday,

JONES—Which way did he go?

ALDRIDGE—He went the way to Chelmsford.

JONES—Did you not fetch his horse from Stout's?

ALDRIDGE—Yes, sir.

JONES—How often did you go for it?

ALDRIDGE—Three times.

JONES—When?

ALDRIDGE—On Tuesday night I sent once, and went twice myself; the first time there was nobody at home to deliver the horse; so I went to Mr. Stout's, and asked him about the horse, and he said he could not deliver him till the maid went home; and then I went about eleven o'clock and had the horse.

HATSELL, BARON—Was it eleven at night?

ALDRIDGE—Yes, my lord.

COWPER—When I sent you to fetch my horse, what directions did I give you?

ALDRIDGE—You gave me directions to fetch your horse, because you said you should have occasion to go out next morning betimes with the judge.

COWPER—The reason I sent for my horse was this; when I heard she had drowned herself, I think it concerned me in prudence to send a common hostler

for him, for fear the lord of the manor should seize all that was there as forfeited.[1]

HATSELL, BARON—There was no danger of that, for she was found *Non compos mentis.*

COWPER—No, my lord, I sent before the verdict.

JONES—It seems you did not think fit to go and take horse there yourself, though you put your horse there.

Now, my lord, we will go on, and give the other evidence that we opened concerning these three other gentlemen that came to town; two of them took lodgings at Gurrey's at five in the afternoon, but did not come in till between eleven and twelve, and then they brought another in with them; and though he had been in town five or six hours, his feet were wet in his shoes, and his head was of a reeky sweat; he had been at some hard labour I believe, and not drinking himself into such a sweat.

Call *John Gurrey, Matthew Gurrey,* and *Elizabeth Gurrey.*

John Gurrey was sworn.

JONES—Do you know any of the gentlemen at the bar?

J. GURREY—Yes.

JONES—Name who you know.

J. GURREY—There is Mr. Stephens, Mr. Rogers, and Mr. Marson.

JONES—Pray do you remember when they took lodging at your house?

[1] The Lord of the Manor might have a right to the forfeited goods of a felon.

J. GURREY—The last assizes; when they first came, there was only Mr. Stephens and Mr. Rogers.

JONES—At what time did they take it?

J. GURREY—I was at church, and cannot tell that, they hired the lodgings of my wife.

JONES—What can you say more?

J. GURREY—I was in at night when they came; there came three of them at eleven at night, whereof Mr. Marson was the third person and he said he was destitute of a lodging and he asked for a spare bed; my wife told him she had one, but had let it; whereupon Mr. Stevens and Mr. Rogers said he should lodge with them; so they went up altogether, and they called for a fire to be kindled, and asked for the landlord, which was I, and they asked me to fetch a bottle of wine, and I told them I would fetch a quart, which I did, and then they asked me to sit down and drink with them, which I did; and then they asked me if one Mrs. Sarah Stout did not live in the town, and whether she was a fortune? I said Yes. Then they said they did not know how to come to the sight of her; and I said I would shew them her to-morrow morning, not questioning but I might see her sometime as she was coming down the street; so they said they would go to see her. Mr. Rogers and Mr. Stephens charged Mr. Marson with being her old sweet-heart; saith Mr. Marson, she hath thrown me off, but a friend of mine will be even with her by this time.

HATSELL, BARON—What o'clock was it then?

J. GURREY—I reckon eleven of the clock when they came in.

HATSELL, BARON—Did you observe in what condition Mr. Marson was in?

J. GURREY—I did not observe, only that he was hot, and put by his wig; I see his head was wet, and he said he was just come from London, and that made him in such a heat.

JONES—Had he shoes or boots on?

J. GURREY—I did not observe that.

JONES—What did they do the next day?

J. GURREY—The next morning I heard this party was in the water; I sat up all night, and was fain to wait till my daughter came down to look after the shop; and then I went to see her, and she removed into the barn, and they were wiping her face, closing her eyes, and putting up her jaws; and as I came back these persons were walking, and I met Mr. Marson and Mr. Stephens, and told them the news; said I, this person has come to a sad accident: say they, so we hear; but nevertheless we will be as good as our word, and go and see her. I went with them and overtook Mr. Rogers; and Marson said we are going to see Mrs. Stout. 'O landlord!' said Rogers, 'you may take up that rogue' (pointing at Mr. Marson) 'for what he said last night'; but I did not think, they speaking so jocularly, that there was any suspicion of their being concerned in the murder. A second time I went, the barn-door was locked; I knocked, and they opened it, and let us in, and they un-covered her face to let me see her, and I touched her; and looking about for them they were gone, and I cannot say they see her or touched her: Then Mr. Marson and they were consulting how to send a great-coat to London, and I directed them to a coachman at the Bell-inn; but I did not hear he went to enquire after the coachman; then they went to your lordship's chamber, and I went home; and about eleven o'clock I saw

Mr. Marson and Mr. Stephens coming down with Mr. Spencer Cowper.

MARSON.—I did not go out that night after I came in.

JONES—No; we agree that. Did you see Mr. Cowper and these gentlemen together?

J. GURREY—Only at eleven o'clock on Tuesday noon, Mr. Cowper, Mr. Marson, and Mr. Stephens were coming down to the market place.

JONES—Did not they take their leave of you when they went away from you that forenoon?

J. GURREY—No; only in the morning they told me they would send me word at noon if they intended to lodge there.

MARSON—I desire to know of Mr. Gurrey, if his sister was not in the room when we came in?

J. GURREY—She was in our house that day; but whether when they came in I cannot tell.

COWPER—Pray, have you not had some discourse with your sister, the widow Davis, concerning some suspicion that you had of Sarah Walker, that hath been produced as a witness?

J. GURREY—I do not remember any such.

COWPER—Then did not you say these words, We must not concern ourselves with Sarah Walker, for she is the only witness against the Cowpers?

J. GURREY—I cannot remember any such thing.

HATSELL, BARON—You may answer according to the best of what you remember; if you say you have forgot when you have not, you are forsworn.

COWPER—If your lordship pleases to give leave to Mr. Gurrey to recollect himself, I ask him, Whether he did not talk with his sister Davis about some suspicion his wife and he had about Sarah Walker, the maid-servant of the deceased?

J. GURREY—I believe there might be some talk of a person that was seen to go into the churchyard at some distance with Sarah Walker.

COWPER—Did your wife say that she did suspect that person?

J. GURREY—Yes.

COWPER—Did your wife say they behaved themselves strangely, and that she would have persuaded the widow Blewit to have watched her?

J. GURREY—There was something of that.

COWPER—Was there not some such words, that they must not meddle with Sarah Walker, for she is the witness against the Cowpers?

J. GURREY—I said, Do not concern yourself with Sarah Walker, for fear of taking off her evidence.

COWPER—Pray did not the widow Davis warm the sheets for these gentlemen?

J. GURREY—She was with my wife, but I cannot say whether she warmed the sheets.

COWPER—When they came home, had you any lodgers that wanted to come home? Had not you one Gape?

J. GURREY—I cannot say whether he was in before or after them.

COWPER—Did not you say to your sister Davis, Now these gentlemen are in bed, if Mr. Gape would come home, our family would be quiet?

J. GURREY—I do not remember that.

COWPER—Pray, did not you go to look for Mr. Gape?

J. GURREY—Yes, I went to Hockley's.

COWPER—Who did you employ to speak to Mr. Gape?

J. GURREY—Mrs. Hockley.

COWPER—When you came home to your own house,

and after you had been at Hockley's to speak with Mr. Gape, what account did you give of the time of night, and other particulars?

J. GURREY—I gave no account of the time.

COWPER—Not to Mrs. Davis?

J. GURREY—I cannot tell whether I did or no.

COWPER—Did not you say, Mr. Gape asked Mrs. Hockley what a-clock it was?

J. GURREY—No, I do not remember that; but Mrs. Hockley went in, and told him what time of night it was; it was eleven or twelve of the clock, which I cannot say.

JONES—Call Martha Gurrey. (Who was sworn.) Which of these gentlemen do you know?

MRS. GURREY—Mr. Marson, Mr. Rogers, and Mr. Stephens.

JONES—What time of the night was it when they came to your house? give an account of it, and what you heard them say.

MRS. GURREY—It was a little after five, or thereabouts that they came.

JONES—Who came?

MRS. GURREY—Mr. Stephens, and Mr. Rogers, and there was one Mr. Gilbert, that married a first cousin of mine; he came and asked me for my husband; and I asked him his business, and he said he wanted to speak to him.

JONES—Pray come to these men; when did they come to your house?

MRS. GURREY—They hired the lodging at five of the clock. When they first came to see them I was not at home; Mr. Gilbert brought them, and as I was coming along the street I saw Mr. Gilbert walking off, and would not look at me.

JONES—When did they go out?

MRS. GURREY—They never staid there.

JONES—When did they come in again?

MRS. GURREY—Between eleven and twelve.

HATSELL, BARON—What did they do when they came again?

MRS. GURREY—I was laying on some sheets two pairs of stairs when they came, and then there was three of them; so they saw me a little after, and begged my excuse for bringing in another, for they said it was so late that they could not get a lodging any where else: and said, if I thought fit, the gentleman should lie with them: And I told them I liked it very well.

JONES—What firing had they?

MRS. GURREY—The firing I laid on in the morning, and they sent for my husband to fetch them some wine.

JONES—What did you hear them talk on?

MRS. GURREY—They discoursed with my husband, and asked him if he knew Mrs. Sarah Stout; and one of them said to Mr. Marson, I think she was an old sweetheart of yours; Ay, said he, but she turned me off, but a friend of mine is even with her: And Mr. Rogers said he was in with her; and afterwards said, her business was done. They had a bundle, that was wrapt up in pure white cloth, like to an apron, but I cannot say it was an apron; and there was a parcel hanging loose by it; and when he laid it down he said, he would pass his word Mrs. Sarah Stout's courting days were over; and I said, I hoped it was no hurt to the gentlewoman; and then I looking upon Mr. Marson, saw him put his peruke aside, and his head reeked, and he told them he was but just come from

London that night, which made him disappointed of a lodging.

JONES—What did you hear them say about any money?

MRS. GURREY—I asked them how they would have their bed warmed? And Mr. Marson answered, very hot: With that I went down to send my daughter up, and she could not go presently; I told her then she must go as soon as she could.

HATSELL, BARON—Pray, do not tell us what passed between you and your daughter: What do you know of these gentlemen?

MRS. GURREY—I went to the next room, to see if every thing was as it should be; I hearkened, and they had some discourse about money, and I heard somebody (I do not know who it should be except it were Mr. Stephens) answer and say, the use money was paid to-night; but what money they meant I cannot tell.

JONES—What did you find when they were gone?

MRS. GURREY—Sir, I found a cord at the end of the trunk.

JONES—Was it there in the morning, or before they came?

MRS. GURREY—No, it could not have been, for I swept my room, and wiped down the dust.

JONES—Was the cord white?

MRS. GURREY—No, it was more dirty than it is now, for my husband and I have worn it in our pockets.

COWPER—Pray, who brought the cord down from above stairs?

MRS. GURREY—My daughter that lived with me, and she laid it upon the shelf.

COWPER—Did not you hear there was a coroner's inquest sitting?

MRS. GURREY—The next day at night I did hear of it.

COWPER—Why did not you go to the coroner's inquest and give an account of it there?

MRS. GURREY—I told my husband of it, and I asked my husband if he did not hear what they said concerning Mrs. Sarah Stout? And he answered, yes, they ought to be taken up for the words they said last night: Why, saith I, do not you take notice of it? I think you ought to take them up. But he went out of doors, and I saw no more of him till the afternoon. When I heard the words, I thought somebody had stole away and got to bed to her.

COWPER—Pray, if your husband heard these words, why did not he go to the coroner's inquest?

MRS. GURREY—I did speak to him to have them taken up.

COWPER—Why did he not do it?

MRS. GURREY—He said he would not do it, he did not know but it might cost him his life.

JONES—How came you after this to discover it?

MRS. GURREY—Because I was so troubled in mind I could not rest night nor day; and I told him if he would not tell of it, I would tell of it myself, for I was not able to live.

Elizabeth Gurrey was sworn.

JONES.—Pray, do you know Mr. Rogers, Mr. Stephens, and Mr. Marson?

E. GURREY—I know Mr. Marson, and these are the other gentlemen, I reckon.

JONES—What discourse did you hear from them?

E. GURREY—Mr. Marson asked the other gentlemen how much money they had spent? the other answered, what was that to him? you have had forty or fifty pounds to your share. Then the other asked him, whether the business was done? And he answered, he believed it was; but if it was not done, it would be done to-night. Then, my lord, he pulled a handful of money out of his pocket, and swore he would spend it all for joy the business was done.

JONES—Was Mr. Cowper's name mentioned?

E. GURREY—I heard them mention Mr. Cowper's name, but not Mrs. Sarah Stout's.

JONES—What condition was the gentleman's shoes in?

E. GURREY—I think it was Mr. Marson, his shoes were very wet and dirty; one of them was very hot, and he wiped his head with his handkerchief.

JONES—Now, my lord, we have done as to our evidence. Mr. Marson pretended he was just then alighted and come from London, and was in a great heat, and his shoes were wet: for when he was examined, he said, he came to town about eight of the clock, and went to the Glove and Dolphin inn, and stayed there till he came to his lodging. Now it was a wonderful thing that he should come wet shod from a tavern, where he had been sitting four or five hours together.

Then the Examination of Mr. John Marson was read:

The Examination of JOHN MARSON, taken before me, this 27th day of April, 1692.

'Who being examined where he was on Monday the 13th of March last, saith, That he was at the borough of Southwark (he being an attorney of the

said court) till past 4 of the clock in the afternoon; and saith, that he set out from Southwark for Hertford soon after, and came to Hertford about eight the same afternoon, and put up his horse at the sign of , an inn there, and then went to the Hand and Glove, together with Godfrey Gimbart, esq., Ellis Stephens, William Rogers, and some others, where they stayed till about eleven of the clock at night, and then this examinant went thence directly to the house of John Gurrey, with the said Stephens and Rogers, who lay together in the said Gurrey's house all that night. And being asked what he said concerning the said Mrs. Sarah Stout, deceased, this examinant saith, that on Sunday the 12th of March last, this examinant being in company with one Thomas Marshall, and telling him that this examinant intended the next day for Hertford, with the marshal of the King's Bench, the said Thomas Marshall desired this examinant and the said Stephens, who was then also in company, that they would go and see the said Sarah Stout (his sweetheart). He confesseth, that he did ask the said Gurrey, if he would shew this examinant where the said Stout lived; telling the said Gurrey that his name was Marshall, and asked him if he never heard of him before; and jocularly said, that he would go and see her the next morning, but doth not believe that he said any thing that any friend was even with the said Sarah Stout, or to such like effect. And doth confess, that he did the next day, upon the said Gurrey's telling him that the said Stout was drowned, say, that he would keep his word, and would see her. And saith, that meeting with Mr. Cowper (who is this examinant's acquaintance) he believes he did talk with him concerning the said

Stout's being drowned, this examinant having seen her body that morning.

'JOHN MARSON.

'*Cogn. Die et Anno antedict.*
Coram J. Holt.'

JONES—All that I observe from it, is this: That he had been five hours in town, and when he came to his lodging, he came in wet and hot, and said he was just come from London.

MARSON—I had rid forty miles that day, and could not be soon cold.

HATSELL, BARON—They have done now for the king; come, Mr. Cowper, what do you say to it?

JONES—If your lordship please, we will call one witness more, Mary Richardson. Mrs. Richardson, do you know Mr. Marson, or any of these gentlemen?

MRS. RICHARDSON—They came on Tuesday night to the Bell at Hoddesdon, and lay there, and one of the gentlemen, when I was warming the sheets, asked me if I knew Mrs. Sarah Stout? And I said Yes. He asked me if I knew which way she came to her end? And I told him I could not tell.

JONES—Is that all? What did they say more?

MRS. RICHARDSON—They did desire and wish it might be found out how it came about; and one gentleman took no notice of her at all. They had a little bundle, but what was in it I cannot tell, but there I saw it bound up in some coloured stuff or other, but what it was I cannot tell.

JONES—Is that all you can say?

MRS. RICHARDSON—Yes, that is all.

JONES—Then we have done.

HATSELL, BARON—Come, Mr. Cowper, what do you say to it?

COWPER—Now they have done on the part of the king, my lord, and you gentlemen of the jury, I must beg your patience for my defence. I confess it was an unfortunate accident for me (as Mr. Jones calls it) that I happened to be the last person (for aught appears) in the company of a melancholy woman. The discourse occasioned by this accident had been a sufficient misfortune to me, without any thing else to aggravate it; but I did not in the least imagine that so little, so trivial an evidence as here is, could possibly have affected me to so great a degree, as to bring me to this place to answer for the worst fact that the worst of men can be guilty of.

My lord, your lordship did just now observe, that I have appeared at the bar for my clients; but I must say too, that I never appeared for myself under this, or the like circumstances, as a criminal, for any offence whatsoever.

He then goes on to point out that there is no positive evidence against him, but only suppositions and inferences—what to-day would be called circumstantial evidence; and that even admitting the evidence of the prosecution, it is as strong to show that the deceased woman was not murdered as that she was. Even if the evidence proved that Mrs. Stout was murdered, there was nothing to show that he or his fellow-prisoners were guilty of the murder. The body was not floating when it was found, as could be shown by the parish officers who were employed by the coroner to take it out of the water. It in fact had sunk, and had then been carried by

the force of the stream sideways up the stakes which were about a foot apart pointing down stream; and yet the alleged fact that the body was floating was the only evidence produced to prove that the woman was not drowned. Evidence would be given to prove that the fact that the body contained little or no water was immaterial, for drowning takes place when only a very little water is received into the lungs; and in a case of suicide it is probable that water would enter the lungs sooner than it would in cases of accident. As to the evidence derived from the examination of the body after exhumation, it ought not to have been given, as the exhumation was itself an offence; 'but as it is I have no reason to apprehend it, being able to make it appear that the gentlemen who spoke to this point have delivered themselves in that manner either out of extreme malice, or a most profound ignorance; this will be so very plain upon my evidence, that I must take the liberty to impute one or both of these causes to the gentlemen that have argued from their observations upon that matter.'

It had been suggested that he had an interest in the death of the deceased by reason of holding money of hers which he had received as her trustee or guardian. He had been concerned in investing some £200 in a mortgage for the deceased the previous December; he had paid

over this money to the mortgagees, and the mortgage had been found by the prosecutors among the papers of the deceased after her death. This was the only money transaction he had ever had with her. The prosecution had proved that there was no concealment of shame to induce him to murder her; and that, though they had no inclination to favour him.

He would produce evidence to show that the dead woman committed suicide, though he only did so most unwillingly and under compulsion. The prosecution had shown that she was melancholy, and he could show that she had reason for making away with herself. This he would do by producing letters of hers, which were he alone concerned he would not allude to; but as he was in honour bound to make the best defence he could for his fellow-prisoners, he had no choice in the matter.

The maid Walker was the only person who gave any direct evidence against him, and she said that she heard the door shut at a quarter past eleven, and that on going downstairs directly afterwards she found that both he and the deceased had left the house. But he would prove that he had entered the Glove Inn as the town clock struck eleven, that he had stayed there a quarter of an hour, that after he had done several things at his lodgings he had gone to bed by twelve, and had not gone out again

that night. He had sent to fetch his horse from Mrs. Stout's house on Tuesday morning, as was only prudent, but he had told the man whom he sent that he would not want it till the next day, when he was going into Essex with the rest of the circuit, which he did.

He had not heard that his name was connected with Mrs. Stout's death till two months after the event; and the prosecution had in fact been set on foot by the Quakers, who were scandalised at the idea of one of their number committing suicide, and the political opponents of his father and brother in the town.

Cowper went on to explain that he always had the offer of a share in his brother's lodgings, which were some of the best in the town, whenever the latter went circuit, 'which out of good husbandry I always accepted.' At the time of the last circuit, when the present case arose, Parliament was sitting, and his brother 'being in the money chair,' could not attend. As Cowper had been invited to lodge with Mrs. Stout during the assizes and wished to accept the invitation, he asked his brother to ask Barefoot, the keeper of his lodgings, to dispose of them if he could. The brother said he would do so 'if he could think on it,' and accordingly Cowper went down to Hertford intending to lodge with Mrs. Stout unless his brother had failed to write to Barefoot. On arriving at Hertford he found

that his brother had not written to Barefoot, and that the rooms there were ready for him. He accordingly stayed there, sent to the coffee-house for his bag, and took up his lodging at Barefoot's as usual. As soon as he had done this, the maid Walker came round from Mrs. Stout's to invite him to dinner there. He accepted the invitation, and also a further invitation to come again in the evening; but he did not agree to sleep there. When he came the second time he paid the deceased the interest on her mortgage, some six pounds odd, in guineas and half-guineas, which money was found in her pocket after she was drowned. He wrote a receipt for the money, which she refused to sign; she pressed him to stay there that night, which he refused to do.

He then went on:—

'My lord, I open my defence shortly, referring the particulars to the witnesses themselves, in calling those who will fully refute the suppositions and inferences made by the prosecutor, whom first, my lord, I shall begin with, to show there is no evidence of any murder at all committed; and this I say again, ought to be indisputably made manifest and proved, before any man can be so much as suspected for it.

HATSELL, BARON—Do not flourish too much, Mr. Cowper; if you have opened all your evidence, call your witnesses, and when they have ended, then make your observations.

MR. COWPER—Then, my lord, I will take up no more of your time in opening this matter. Call

Robert Dew. (Who appeared.) When Mrs. Sarah Stout drowned herself, was not you a parish officer?

DEW—I was. I was next house to the Coach and Horses; and about six o'clock came a little boy (Thomas Parker's boy), and said there was a woman fallen into the river. I considered it was not my business, but the coroner's, and I sent the boy to the coroner, to acquaint him with it, and the coroner sent word by the boy, and desired she might be taken out; so I went to the river, and saw her taken out: she lay in the river (as near as, I could guess) half a foot in the water; she was covered with water; she had a striped petticoat on, but nothing could be seen of it above water. I heaved her up, and several sticks were underneath her, and flags; and when they took her out, she frothed at the nose and mouth.

COWPER—How was she? Was she driven between the stakes?

DEW—She lay on the right side, her head leaning rather downwards: and as they pulled her up, I cried, 'Hold, hold, hold, you hurt her arm'; and so they kneeled down and took her arm from the stakes.

COWPER—Did you see any spot upon her arm?

DEW—Yes, sir.

COWPER—What sort of spot was it?

DEW—It was reddish; I believe the stakes did it; for her arm hit upon the stake where she lay.

COWPER—Pray, how do these stakes stand about the bridge of the mill?

DEW—I suppose they stand about a foot asunder; they stand slanting, leaning down the stream a little.

COWPER—Could you discern her feet?

DEW—No, nothing like it, nor the striped petticoat she had on.

COWPER—Might not her knees and legs be upon the ground, for what you could see?

DEW—Truly, if I were put upon my oath whether they were so, or not, I durst not swear it; sometimes the water there is four feet, sometimes three and a-half; I believe her feet were very near the bottom.

COWPER—Are not the stakes nailed with their head against the bridge?

DEW—They are nailed to the side of the bridge.

COWPER—Pray, describe the manner in which they took her up.

DEW—They stooped down, and took her up.

COWPER—Did they take her up at once?

DEW—They had two heavings, or more.

COWPER—What was the reason they did not take her up at once?

DEW—Because I cried out, 'They hurt her arm.'

COWPER—Was she not within the stakes?

DEW—No, this shoulder kept her out.

COWPER—When you complained they hurt her arm, what answer did they make you?

DEW—They stooped down and took her arm out from between the stakes; they could not have got her out else.

COWPER—After she was taken out, did you observe any froth or foam come from her mouth or nose?

DEW—There was a white froth came from her, and as they wiped it away, it was on again presently.

COWPER—What was the appearance of her face and upper parts at that time?

DEW—She was so much disfigured, I believe that scarce any of her neighbours knew her, the slime of the water being upon her.

COWPER—Did you see her maid Sarah Walker at that time?

DEW—No.

HATSELL, BARON—Mr. Cowper, do you intend to spend so much time with every witness? I do not see to what purpose many of these questions are asked.

COWPER—I have done with him: call Young.

HATSELL, BARON—Mr. Cowper, I would not have you straiten yourself, but only ask those questions that are pertinent.

COWPER—Pray, give an account of what you know of the matter.

YOUNG—On Tuesday morning between five and six o'clock, last assizes——

COWPER—What officer did you say?

YOUNG—I was constable.

COWPER—Was you employed by the coroner?

YOUNG—Not by him in person. Between five and six o'clock some of the men that came into my yard to work, told me a woman was drowned at the mill; I staid a little and went down to see, and when I came there, I saw a woman, as they had told me, and I saw part of her coat lie on the top of the water to be seen, and I looked strictly and nicely within the bridge and saw the face of a woman, and her left arm was on the outside the stakes, which I believe kept her from going through; so I looked upon her very wishfully, and was going back again; and as I came back I met with Mr. Dew and two of my neighbours, and they asked me to go back with them, and said they were going to take her up; and being constable, I told them I thought it was not proper to do it, and they said they had orders for it; so I being constable went back with them, and when I came there I found her in the same posture as before; we viewed her very wishfully; her coat that was driven near the stakes

was seen, but none of her coats, or her legs; and after we had looked a little while upon her, we spake to Dell and Ulse to take her up, and one of them took hold of her coat till he brought her above water; and as her arm drew up, I saw a black place, and she laid sideway, that he could not take her up till they had let her down again, and so they twisted her out sideway; for the stakes were so near together that she could not lie upon her belly, or upon her back; and when they had taken her up, they laid her down upon a green place, and after she was laid down, a great quantity of froth (like the froth of new beer) worked out of her nostrils.

HATSELL, BARON—How much do you call a great quantity?

YOUNG—It rose up in bladders, and run down on the sides of her face, and so rose again; and seeing her look like a gentlewoman, we desired one Ulse to search her pockets, to see if there were any letters, that we might know who she was; so the woman did, and I believe there was twenty or more of us that knew her very well when she was alive, and not one of us knew her then; and the woman searched her pockets, and took out six guineas, ten shillings, three pence halfpenny, and some other things; and after that I desired some of my neighbours to go with me and tell the money; for when it came to be known who she was, I knew we must give an account on it, and I laid it upon a block and told it, and they tyed it up in a handkerchief, and I said I would keep the money, and they should seal it up to prevent any question about it; and during all this while of discourse, and sealing up the money, the froth still worked out of her mouth.

COWPER—Have you measured the depth of the water? What depth is it there?

YOUNG—I measured the water this morning, and it was so high that it ran over the floodgate, and the height of it was about four foot two inches; but sometimes it is pent up to a greater height than it is to-day.

COWPER—Was it higher to-day than when the body was found?

YOUNG—To the best of my remembrance, it was as high to-day as it was then.

COWPER—Was any part of the body above water?

YOUNG—No, nor nothing like the body could be seen.

COWPER—Could you see where her legs lay?

YOUNG—No, nor nothing but her upper coats, which were driven against the stakes.

COWPER—Pray give an account how long she lay there, and when she was conveyed away?

YOUNG—I stayed a quarter of an hour, and then I went and sealed up the money at my own house, so that I did not see her removed.

JONES—Was anybody there besides yourself at this time?

YOUNG—Yes; twenty people at the least.

JONES—Now here is ten of them that have sworn that the body was above the surface of the water.

HATSELL, BARON—No, her cloaths, they say, were, but the body was something under the water.

COWPER—Now I will trouble your lordship no more with that fact, but I will give you an account of the coroner's inquest, how diligent they were in their proceedings, and produce a copy of the inquisition itself, that she was found to have drowned herself.

HATSELL, BARON—Mr. Cowper, that is no evidence

if it be produced in order to contradict what these witnesses have said, that have been examined for the king; but if you will prove that they have sworn otherwise before the coroner than they now do, then you say something, otherwise the coroner's inquest signifies nothing as to the present question.

COWPER—*Call Thomas Wall. I am loth to be* troublesome; but, if you please to favour me, I desire to know of them whether they do admit there was an inquisition, and that she was found *non compos mentis* and did kill herself.

JONES—We do admit it.

JURYMAN—We desire it may be read.

HATSELL, BARON—Why, will not you believe what they agree to on both sides?

JURYMAN—If they do agree so, I am satisfied.

Wall was one of the coroner's jury, and saw the marks on the body which he described; Mr. Camlin and the younger Dimsdale were requested to examine them, which they did, and reported that they were no more than were usual in such cases. Wall refreshed his memory from his notes, and said that Sarah Walker had said that it was about eleven when she had taken the coals up to warm Cowper's bed, but she could not say when it was that Cowper went out, for she took up some more coals, and then tarried a little, and then went down and found that Cowper and her mistress had gone out.

HATSELL, BARON—The woman said the same thing.

COWPER—It is necessary in this particular as to time.

HATSELL, BARON—She told you the clocks did differ.

Bowden and *Shute* gave evidence as to the finding of the body and as to its state when found, corroborating the other witnesses.

COWPER—My lord, I am very tender how I take up your lordship's time, and therefore I will not trouble you with any more witnesses on this head; but with your lordship's leave I will proceed to call some physicians of note and eminence, to confront the learning of the gentlemen on the other side.

Dr. Sloane[1] said he had not heard the other witnesses very distinctly, because of the crowd; but that cases of the present kind were very uncommon, and that none of them had fallen under his own knowledge. It was plain that a great quantity of water might be swallowed without suffocation;

drunkards, who swallow freely a great deal of liquor, and those who are forced by the civil law to drink a great quantity of water, which in giving the question

[1] Sir Hans Sloane (1660-1753) was born in Co. Down. He studied medicine abroad, and was elected a member of the Royal Society in 1685. In 1687 he went to the West Indies as secretary to the Duke of Albemarle, and made valuable scientific collections. He was elected secretary of the Royal Society in 1693, and succeeded Sir Isaac Newton as president of the same body in 1727. He was physician to Queen Anne and George the Second, and founded the botanical garden at Chelsea for the Society of Apothecaries. He left his collections to the nation, and they formed part of the original nucleus of the British Museum. Sloane Street and Hans Square derive their names from him.

(as it is called) is poured into them by way of torture to make them confess crimes,[1] have no suffocation or drowning happen to them.

But on the other hand, when any quantity comes into the windpipe, so it does hinder or intercept the inspiration, or coming in of the air, which is necessary for the respiration, or breathing, the person is suffocated. Such a small quantity will do, as sometimes in prescriptions, when people have been very weak, or forced to take medicines, I have observed some spoonfuls in that condition (if it went the wrong way) to have choaked or suffocated the person.

He took drowning to be when water got into the windpipe or lungs, and believed that whether a person fell into the water alive or dead, some quantity would find its way there. He inclined to believe that the general condition of the body was consistent with the woman having been drowned.

Dr. Garth gave reasons for disagreeing with the doctors called for the prosecution in considering that the general state of the body proved that the woman had not been drowned, pointing out that it was as unnatural for a human body to float on its side, as for a shilling to rest on its edge, or for a deal board to float edgewise rather than otherwise. In spite of what had been said about the seamen, he believed that dead bodies would generally sink.

[1] The lay reader must observe that Sloane is talking of the 'civil law.'

HATSELL, BARON—But you do not observe my question; the seamen said that those that die at sea and are thrown overboard, if you do not tye a weight to them, they will not sink; what say you to that?

DR. GARTH—My lord, no doubt in this they are mistaken. The seamen are a superstitious people, they fancy that whistling at sea will occasion a tempest. I must confess I have never seen anybody thrown overboard, but I have tried some experiments on other dead animals, and they will certainly sink; we have tried this since we came here hither. Now, my lord, I think we have reason to suspect the seaman's evidence; for he saith that three-score pound of iron is allowed to sink the dead bodies, whereas six or seven pounds would do as well. I cannot think the commissioners of the navy guilty of so ill husbandry; but the design of tying weights to their bodies, is to prevent their floating at all, which otherwise would happen in some few days; therefore what I say is this, that if these gentlemen had found a cord, or the print of it, about the neck of this unfortunate gentlewoman, or any wound that had occasioned her death, they might then have said something.

Dr. Morley was called, and supported the view that a drowned body need not necessarily have much water in it, and that it need not float. He had tried experiments on two dogs the night before; he drowned them both, and dissecting one found no water in its stomach, while the other sank to the bottom of the water.

Dr. Woollaston and Dr. Gelstrop both gave

evidence to the same effect as the preceding witnesses.

COWPER—Now, my lord, I would call Mr. William Cowper; and because of his name, I must acquaint your lordship that he is not at all acquainted with me, though I should be proud to own him if he were so; he is a man of great learning, and I believe, most people admit him to be the best anatomist in Europe. Mr. Cowper, will you give your opinion of this matter?

Mr. W. Cowper[1] accordingly, premising that he would not only 'speak, from reason,' but give an account of experiments, stated that the symptoms described were consistent with drowning;

this is a truth that no man can deny who is acquainted with any thing of this nature, that when the head of an animal is under water, the first time it is obliged to inspire (or draw in air) the water will necessarily flow into its lungs, as the air would do if it were out of the water; which quantity of water (if the dimensions of the windpipe and its branches in the lungs be considered), will not amount to three inches square, which is about three ounces of water.

[1] William Cowper (1666-1709) was a leading surgeon at the time of this trial, having been elected a member of the Royal Society in 1696, and in 1698 having published a treatise on anatomy, which led to a vigorous controversy between him and a Dutch doctor of the name Bidloo, whose anatomical plates he seems to have adopted for his own work. He subsequently published a variety of papers on surgery, and was the discoverer of Cowper's glands.

And this quantity of water would be sufficient to cause suffocation, and after suffocation, swallowing would become impossible. This he said, not by way of conjecture or hypothesis, but as the result of experiment.

I shall by the bye, tell you how fallacious the first experiment was, when I proposed to satisfy myself whether a dead body would float in water. It happened that a spaniel, that had a great deal of long hair was hanged for this purpose, which I found to float on the surface of the water; but when I considered that his hair might buoy him up, I caused another dog, which had shorter and less hair, to be hanged and put into the water, which (according to what I had always conceived of the human body) sunk directly to the bottom. In order to satisfy myself what quantity of water was necessary to enter the body of an animal, and cause suffocation in water, I caused three dogs, when alive, to be suddenly plunged under water till they were stifled; the result was that about three ounces of water were found in their lungs, and none in their stomachs. Dead bodies generally sank; weights were attached to dead bodies, not so much to make them sink at the time, as to prevent them floating afterwards.

Cowper—With your lordship's favour, I now think it a proper time to make this observation. The witnesses that have given evidence for the king do say they believe she was not drowned; but they have not pretended to say how she died otherwise.

Hatsell, Baron—That is very true.

Dr. Crell was generally of the same opinion as

that expressed by the last witness, and, in spite of the suggestion of the judge that he should confine his evidence to matters within his own experience, quoted the opinion of Ambrose Parey ('who was chief surgeon to Francis the 1st, employed by him in most of his sieges and battles against emperor Charles the 5th, and consequently must observe, and could not be ignorant of such like casualties in such great bodies of men'), as expressed in his chapter of Renunciations, to the effect that the certain sign of a man being drowned was an appearance of froth about his nostrils and mouth. Altogether his firm opinion was that the woman was drowned.

Mr. Harriot, who had been a surgeon in the Fleet; and *Bartlet,* who had been in several naval engagements, both swore that dead bodies when thrown overboard sank at first, though they floated again afterwards.

Mr. Camlin was called at the coroner's inquest, and examined the body. He found certain marks on the head and breast which Mr. Dimsdale said were only the result of drowning; he had seen more decided marks on the body of the child that was drowned. He saw no indications that Mrs. Stout had been strangled.

Bowd — It was much about this time twelvemonth I had some business in London; and she [Mrs. Stout] sent to me, to know when I should go to London; and I waited upon her before I went, and

she desired me to do some business for her; and when I returned, I acquainted her with what I had done; and sitting together in the hall, I asked her, what is the matter with you? Said I, there is something more than ordinary; you seem to be melancholy. Saith she, you are come from London. and you have heard something or other: said I, I believe you are in love. In love! said she. Yes, said I, Cupid, that little boy, hath struck you home: she took me by the hand; Truly, said she, I must confess it; but I did think I should never be guilty of such a folly: and I answered again, I admire that should make you uneasy; if the person be not of that fortune as you are, you may, if you love him, make him happy and yourself easy. That cannot be, saith she: the world shall not say I change my religion for a husband. And some time after I had been in London, having bought some India goods, she came to my shop and bought some of me for a gown, and afterwards she came to pay me for it; and I asked her, How do you like it? have you made it up? No, said she, and I believe I shall never live to wear it.

COWPER—Pray how long is it since?

BOWD—It was about February or January before her death. I asked her, why she did not come to my house oftener She said, she had left off all company, and applied herself to reading; and company was indifferent to her.

Several other witnesses were then called to prove that they had recently seen the deceased woman in a state of melancholy, and that she had admitted that she was in love, though she would not say with whom.

COWPER—Mrs. Cowper, what do you know of Mrs. Stout's melancholy?

COWPER—My lord, this is my brother's wife.

MRS. COWPER—About spring was twelve month, she came to London, and I believe it was not less than once or twice a week I saw her; and I never had an opportunity to be an hour alone with her at any time, but I perceived something in her melancholy. I have asked her the reason of it several times, and sometimes she seemed to dislike her profession, being a Quaker; and sometimes she would say, that she was uneasy at something that lay upon her spirits, which she should never outlive; and that she should never be well while she was in this world. Sometimes I have endeavoured to persuade her out of it seriously, and sometimes by raillery, and have said are you sure you shall be better in another world? And particularly I remember I have said to her, I believe you have Mr. Marshall in your head: either have him, or do not trouble yourself about him; make yourself easy either one way or another; and she hath said no, in an indifferent way, I cannot make myself easy: Then I have said, marry him: no, saith she, I cannot. Sometimes with company she would be diverted, and had frequently a way of throwing her hands, and shewed great disturbance and uneasiness. This time twelvemonth, at the summer assizes, I was here six days, and I saw her every day; and one time, among other discourse, she told me she had received great disturbance from one Theophilus, a waterman and a Quaker, who coming down to old Mrs. Stout, that was then lame, she had gathered about 20 or 30 people together to hear him preach; and she said he directed his discourse to her,

and exasperated her at the rate that she had thoughts of seeing nobody again, and said, she took it heinously ill to be so used, and particularly, that he had told her that her mother's falling outwardly in the flesh should be a warning that she did not fall inwardly; and such 'canting stuff,' as she called it; and she said, that Theophilus had so used her, that she was ashamed to show her head. Another time, the same week, she had a fever, and she said, she was in great hopes it would end her days, and that she neglected herself in doing those things that were necessary for her health, in hopes it would carry her off, and often wished herself dead. Another time, which I think was the last time I saw her, it was at my sister's lodgings, and I sent for her to drink a dish of tea with us, and she came in a great toss and melancholy: Said I, what is the matter? you are always in this humour. Saith she, I cannot help it, I shall never be otherwise. Saith my sister, for God's sake keep such thoughts out of your head as you have had, do not talk any more of throwing yourself out of window: Saith she, I may thank God that ever I saw your face, otherwise I had done it, but I cannot promise I shall not do it.

HATSELL, BARON—What is your name, madam?

COWPER—It is my brother's wife, my lord. I desire Mrs. Toller may give an account of what she knows as to her being melancholy.

MRS. TOLLER—My lord, she was once to see me, and she looked very melancholy, and I asked her what was the matter? and she said, something had vexed her that day; and I asked her the cause of it, and she stopped a little while, and then said, she would drown herself out of the way.

HATSELL, BARON—How long ago was this?

MRS. TOLLER—About three quarters of a year ago.

JOHN STOUT—I desire to know whether she has always said so, or not told another story.

MRS. TOLLER—I told you no story; it may be I did not say so much to you, but I said she talked something of drowning. I have been with her when Mr. Cowper's conversation and name has been mentioned, and she said she kept but little company; that sometimes she went to Mrs. Low's, and that she kept none but civil modest company, and that Mr. Cowper was a civil modest gentleman, and that she had nothing to say against him.

COWPER—This is Mrs. Eliz. Toller, my lord.

ELIZABETH TOLLER—My lord, she came to see me some time after Christmas, and seemed not so cheerful as she used to be; said I, what is the matter? Why are you not so merry as you used to be? Why do you not come often to see me? Saith she, I do not think to go abroad so much as I used to do, and said; it would be as much a rarity to see her go abroad, as to see the sun shine by night.

COWPER—Mrs. Grub, what do you know concerning Mrs. Stout's pulling out a letter at her brother, Mr. John Stout's? Give an account of it, and what she said upon that occasion.

MRS. GRUB—I have a daughter that lives at Guernsey, and she sent me a letter, and I prayed Mrs. Sarah Stout to read the letter; and while she was reading it I cried; saith she, why do you cry? said I, because my child is so far off. Said she, if I live till winter is over, I will go over the sea as far as I can from the land.

HATSELL, BARON—What was the occasion of her

MRS. GRUB—I was washing my master's study, Mrs. Sarah Stout came in, and I had a letter from my daughter at Guernsey, and I prayed Mrs. Sarah Stout to read it, and she read my letter, and I cried, and she asked me, why I cryed? Said I, because my child is so far off: Saith she, if I live to winter, or till winter is over, I will go over sea as far as I can from the land.

COWPER—Now, my lord, to bring this matter of melancholy to the point of time, I will call one witness more, who will speak of a remarkable instance that happened on Saturday before the Monday when she did destroy herself.

Call Mr. Joseph Taylor. Pray will you inform the court and jury of what you observed on Saturday before the Monday on which Mrs. Stout destroyed herself.

JOSEPH TAYLOR—I happened to go in at Mr. Firmin's shop, and there she sat the Saturday before this accident happened, the former assizes, and I was saying to her, 'Madam, I think you look strangely discontented; I never saw you dressed so in my life: Saith she, the dress will serve me as long as I shall have occasion for a dress.

COWPER—In what posture did she appear in the shop?

JOSEPH TAYLOR—She appeared to be very melancholy.

COWPER—What part of her dress did you find fault with?

JOSEPH TAYLOR—It was her head cloaths.

COWPER—What was the matter with them?

JOSEPH TAYLOR—I thought her head was dawbed with some kind of grease or charcoal.

COWPER—What answer did she make?

JOSEPH TAYLOR—She said, they would serve her time.

COWPER—As to this piece of evidence, if your lordship pleases, I desire it may be particularly taken notice of; it was her head-dress that she said would serve her time.

Pray, Mr. Taylor, was you at Mr. Barefoot's when I came there on Monday morning?

JOSEPH TAYLOR—Yes; I went up stairs with you into your chamber.

COWPER—Pray, what did I say to Mr. Barefoot?

JOSEPH TAYLOR—You asked him if they had received a letter from your brother, and he said, No, not that he knew of, but he would call his wife, and he did call his wife, and asked her if she had received a letter, and she said, No; then said you, I will take up this lodging for mine; and accordingly you went up stairs, and I went with you, and staid there about four times as long as I have been here.

COWPER—Are you very sure that I said, I would take up my lodgings there?

JOSEPH TAYLOR—Yes, I am very sure of it.

HATSELL, BARON—What time of the day was it?

JOSEPH TAYLOR—It was the fore part of the day; while I was there, my lord, Mrs. Sarah Stout's maid came to invite Mr. Cowper to her house to dinner.

COWPER—Did you know anything of my sending to the coffee-house?

JOSEPH TAYLOR—You sent to the coffee-house for your things.

HATSELL, BARON—Did Mr. Cowper use to lie at Mrs. Barefoot's?

JOSEPH TAYLOR—His brother did, but I do not know whether this gentleman did, but at that time he took up that place for his lodging; and said, it was all one, my brother must pay for it, and therefore I will take it up for myself.

COWPER—Call Mrs. Barefoot and her maid.

[But they not presently appearing,]

COWPER—My lord, in the meantime I will go on to the other part of my evidence, in opening of which I shall be very short.

My lord, my wife lodging at Hertford, occasioned me frequently to come down. Mrs. Stout became acquainted with her; When business was over in the long vacation, I resided pretty much at Hertford, and Mr. Marshall came down to pay me a visit, and this introduced his knowledge of Mrs. Stout. When she was first acquainted with him she received him with a great deal of civility and kindness, which induced him to make his addresses to her, as he did, by way of courtship. It happened one evening that she and one Mrs. Crook, Mr. Marshall and myself, were walking together, and Mr. Marshall and Mrs. Crook going some little way before us, she took this opportunity to speak to me in such terms, I must confess, as surprized me. Says she, Mr. Cowper, I did not think you had been so dull. I was inquisitive to know in what my dulness did consist. Why, says she, do you imagine I intend to marry Mr. Marshall? I said I thought she did, and that if she did not, she was much to blame in what she had done: No, says she, I thought it might serve to divert the censure of the world, and favour our acquaintance. My lord, I have some original letters under her own hand which will

make this fully manifest; I will produce the letters after I have called Mr. Marshall. Mr. Marshall.

MR. MARSHALL—If your lordship pleases, it was in the long vacation I came down to spend a little of my leisure time at Hertford; the reason of my going thither was, because Mr. Cowper was there at that time. The first night when I came down I found Mrs. Sarah Stout visiting at Mr. Cowper's lodgings and there I first came acquainted with her; and she afterwards gave me frequent opportunities of improving that acquaintance; and by the manner of my reception by her, I had no reason to suspect the use it seems I was designed for. When I came to town, my lord, I was generally told of my courting Mrs. Stout, which I confess was not then in my head; but it being represented to me as a thing easy to be got over, and believing the report of the world as to her fortune, I did afterwards make my application to her; but upon very little trial of that sort, I received a very fair denial, and there ended my suit; Mr. Cowper having been so friendly to me, as to give me notice of some things, that convinced me I ought to be thankful I had no more to do with her.

HATSELL, BARON—When did she cast you off?

MR. MARSHALL—I cannot be positive as to the time, my lord, but it was in answer to the only serious letter I ever writ to her; as I remember, I was not over importunate in this affair, for I never was a very violent lover.

HATSELL, BARON—Well, but tell the time as near as you can.

MR. MARSHALL—I believe it was a second or third time I came down to Hertford, which is about a year and a half since; and, during the whole of my

acquaintance with her, I never till then found her averse to any proposal of mine; but she then telling me her resolution was not to comply with what I desired, I took her at her word, having, partly by my own observation, but more by Mr. Cowper's friendship, been pretty well able to guess at her meaning.

Cowper—Because what you say may stand confirmed beyond contradiction, I desire you to say whether you have any letters from her to yourself?

Mr. Marshall—Yes, I have a letter in my hand which she sent me, upon occasion of some songs I sent her when I came to town, which she had before desired of me; and this is a letter in answer to mine; it is her hand-writing, and directed to me.

Hatsell, Baron—How do you know it is her hand-writing?

Mr. Marshall—I have seen her write, and seen and received several letters from her.

Cowper—Pray shew it Mr. Beale.

Mr. Beale—I believe it to be her hand; I have seen her write, and have a receipt of hers.

Clerk of Arraigns—It is directed to Mr. Thomas Marshall at Lyons-inn, and dated Sept. 26, 1697.

'*Sept.* 26, 1697.

'Sir,

'Yours came very safe; but I wish you 'had explained your meaning a little more about 'the accident you speak of; for I have been puz-'zling my brains ever since; and without I shall 'set myself to conjuring, I cannot imagine what it 'should be, for I know of nothing that happened 'after you went away, nor no discourse about you, 'only when we were together, the company would

'sometimes drink your health, or wish you had 'been there, or the like; so that I fancy it must 'be something Mr. has invented for 'diversion; though I must confess we have a sort 'of people here, that are inspired with the gift of 'foreknowledge, who will tell one as much for 'nothing as any astrologer will have a good piece 'of money for. But to leave jesting, I cannot tell 'when I shall come to London, unless it be for the 'night and away, about some business with my 'brother, that I must be obliged to attend his 'motions; but when I do, I shall remember my 'promise, although I do not suppose you are any 'more in earnest than myself in this matter. I 'give you thanks for your songs and your good 'wishes, and rest,

'Your loving Duck.'

COWPER—Have you any more letters?

MR. MARSHALL—Yes, I have another letter here, but before it is read, I think it will be proper to give the court an account of the occasion of its being writ. I waited on Mrs. Stout one evening at her lodgings in Houndsditch, and at our parting she appointed to meet me the next day; and to excuse her not coming according to that appointment, she sent me this letter.

CLERK OF ARRAIGNS—It is directed to Mr. Thomas Marshall; it is without date.

'MR. MARSHALL,

'I met unexpected with one that came from 'H——d last night, who detained me so long with 'relating the most notorious inventions and lyes 'that are now extant amongst those people, that I could not possible come till it was late; and this

'day was appointed for business, that I am uncertain
'when it will be finished; so that I believe I can-
'not see you whilst I am in town. I have no more
'at present, but that I am

'Your obliged Friend.'

COWPER—Now, my lord, if your lordship please, I proceed to shew you, that I went not so much voluntarily as pressed by her to come to this house, and for that I will produce one letter from her to myself; and, my lord, I must a little inform you of the nature of this letter. It is on the outside directed to Mrs. Jane Ellen, to be left for her at Mr. Hargrave's coffee-house. For her to direct for me at a coffee-house, might make the servants wonder and the post-man might suspect, and for that reason she directed it in that manner. There was Mr. Marshall by whom I received it, and I can prove the hand by Mr. Beale.

MR. MARSHALL—My lord, I verily believe I was by, and that Mr. Cowper shewed me this letter immediately on receipt of it, as he had done several others from the same hand.

CLERK OF ARRAIGNS—This is directed for Mrs. Jane Ellen. It is dated March the 5th, without any year.

'*March the 5th.*

'SIR,

'I am glad you have not quite forgot
'that there is such a person as I in being; but I
'am willing to shut my eyes, and not see anything
'that looks like unkindness in you, and rather
'content myself with what excuses you are pleased
to make, than be inquisitive into what I must not

'know. I should very readily comply with your 'proposition of changing the season, if it were in 'my power to do it, but you know that lies alto- 'gether in your own breast; I am sure the winter 'has been too unpleasant for me to desire the con- 'tinuance of it; and I wish you were to endure 'the sharpness of it but for one hour, as I have 'done for many long nights and days; and then 'I believe it would move that rocky heart of yours, 'that can be so thoughtless of me as you are; But 'if it were designed for that end, to make the 'summer the more delightful, I wish it may have 'the effect so far, as to continue it to be so too, 'that the weather may never overcast again; the 'which if I could be assured of, it would recom- 'pense me for all that I have ever suffered, and 'make me as easy a creature as I was the first 'moment I received breath. When you come to 'H——d pray let your steed guide you, and do 'not do as you did the last time; and be sure 'order your affairs to be here as soon as you can, 'which cannot be sooner than you will be heartily 'welcome to

'Your very sincere Friend.'

'*For Mrs. Jane Ellen, at Mr. Hargrave's,*
near Temple-bar, London.'

COWPER—Though it is directed to Mrs. Jane Ellen, it begins in the inside 'Sir,' and it is dated the 5th March next before the 13th.

HATSELL, BARON—What March was it?

MR. MARSHALL—I kept no account of the time, but I am very positive, by the contents, that Mr. Cowper shewed me this letter and I read it, but by my now

remembrance, it should be longer since than March last.

COWPER—It was March last. That which will set Mr. Marshall's memory to rights is this other letter, which I received at the Rainbow, when he was by, and he read it; and he importuning me to a matter of this kind, I did produce it to my brother and him; they both knew of it; and both read it, and that will refresh his memory concerning the date of the other.

MR. MARSHALL—My lord, I was in the coffee-house with Mr. Cowper when he received this letter; and he afterwards shewed it to Mr. William Cowper, at the Covent-garden tavern, when I was by.

CLERK OF ARRAIGNS—This is dated the 9th of March, and directed to Mrs. Jane Ellen, at Mr. Hargrave's.

March 9.

'SIR,

'I writ to you by Sunday's post, which I hope 'you have received; however, as a confirmation, I 'will assure you I know of no inconveniency that can 'attend your cohabiting with me, unless the grand 'jury should thereupon find a bill against me; but 'I won't fly for it, for come life, come death, I am 'resolved never to desert you; therefore according 'to your appointment I will expect you and till 'then I shall only tell you, that I am

'Yours,' etc.

'*For Mrs. Jane Ellen, at Mr. Hargrave's, near Temple-bar, London.*'

COWPER—If your lordship please, I will further prove this letter by my brother.

William Cowper said that about a year and a

half since, when Mrs. Stout was in London, his brother came to his chamber in the Temple, and told him that he had received a letter from Mrs. Stout, saying that she intended to visit him in his chamber that day. His brother told the witness that because of her connection with Marshall, as well as for other reasons, he would not receive her there; and it was arranged that as she intended first to dine with their father at his house in Hatton Garden, where the witness was then living, he should take the opportunity for casually remarking that the prisoner was that day gone to Deptford, as he in fact intended to do. This plan was carried out, with the result that Mrs. Stout left the room fainting. The witness then went on to give an account of how his brother showed him the last letter mentioned, at the Covent Garden Tavern—

Saith he, the occasion of my shewing it, is not to expose a woman's weakness, but I would not willingly lie under too many obligations, nor engage too far; nor on the other hand would I be at an unnecessary expence for a lodging.

It was accordingly arranged that the witness should write to Barefoot to dispose of his lodgings, as Cowper had already related.

I said I would write the next day, being Saturday; but when I should have writ, it was very late, and I was weary, being then tied down to the business of parliament; and partly for that reason, and partly in

point of discretion, which I had upon my second thoughts, that it would be better for my brother to be at Mr. Barefoot's, which is near the court, and in the market place, I did neglect writing; and though I thought of it about eleven o'clock, yet, as I said, partly for one reason, and partly for another, I did not write that time.'

Beale was then called to prove the hand-writing of the letters, and the jury declared themselves satisfied.

HATSELL, BARON—I believe you may ask her mother, she will tell you whether it be her daughter's hand.

MRS. STOUT—How should I know! I know she was no such person; her hand may be counterfeited.

HATSELL, BARON—But if it were written in her more sober stile, what would you say then?

MRS. STOUT—I shan't say it to be her hand unless I saw her write it.

MR. STOUT—It is like my sister's hand.

HATSELL, BARON—Do you believe it to be her hand?

MR. STOUT—No, I don't believe it; because it don't suit her character.

Mrs. Barefoot had expected Cowper at her lodgings, and had prepared a bed for him. Cowper came to her house as usual, and sent to the coffee-house for his bag. Mrs. Stout sent her maid over to invite Cowper to dine at their house. Cowper came back to her house about eleven, by the town clock, and did not go out again.

Hanwell, the last witness's maid, made some

preparations in Cowper's room before he went to bed, which he did a little before twelve.

Referring to the last-quoted letter of the deceased woman, Cowper says:

'I had rather leave it to be observed, than make the observation myself, what might be the dispute between us at the time the maid speaks of. I think it was not necessary she should be present at the debate; and therefore I might not interrupt her mistress in the orders she gave; but as soon as the maid was gone I made use of these objections; and I told Mrs. Stout by what accident I was obliged to take up my lodgings at Mrs. Barefoot's, and that the family was sitting up for me; that my staying at her house under these circumstances, would in probability provoke the censure of the town and country; and that therefore I could not stay, whatever my inclination might otherwise be; but, my lord, my reasons not prevailing, I was forced to decide the controversy by going to my lodging; so that the maid may swear true, when she says I did not contradict her orders.'

Spurr proved that Cowper came to the Glove and Dolphin Inn as the clock struck eleven, and stayed there about a quarter of an hour. The Glove and Dolphin was a little less than a quarter of a mile from Mrs. Stout's house.

Cowper then pointed out that, according to Sarah Walker's evidence, he left Mrs. Stout's house at a quarter to eleven by the real time; that if, as he should prove, it took half an hour to go from there to the place where Mrs. Stout

was drowned, he could not, according to the evidence he had just called, have been there.

Sir W. Ashurst said it took him half an hour and one minute to walk to the place where the deceased was drowned. *Sir T. Lane* said it took him about three-quarters of an hour, 'and we did not stay at all by the way, except just to look upon the hospital.'

Kingett and *Man*, two servants at the Glove and Dolphin, confirmed Spurr's evidence as to the time when Cowper arrived there and the time he stayed there; adding that he came there to ask about an account for his horse.

HATSELL, BARON—Pray, wherein hath Sarah Walker said anything that is false?

COWPER—In this: I asked her when she gave evidence, whether she went out to see for her mistress all that night, and whether her mistress did not use to stay out at nights, and whether she herself had not used to say so? If your lordship pleases to remember, she said no. Pray, Mrs. Mince, what have you heard Mrs. Stout's maid say concerning her mistress, particularly as to her staying out all night?

MRS. MINCE—She hath said, that her mistress did not love to keep company with Quakers; and that she paid for her own board and her maid's; and that, when she entertained any body, it was at her own charge. And she hath said, that Mrs. Stout used to ask, who is with you, child? and she would not tell her; and that she did entertain her friends in the summer house now and then with a bottle of wine; and when her mother asked who was there? her mistress would say,

bring it in here, I suppose there is none but friends; and after the company was gone, she used to make her mother believe that she went to bed: but she used to go out and take the key with her, and sometimes she would go out at the window, and she said particularly, one time she went out at the garden window, when the garden door was locked, and that she bid her not sit up for her, for she would not come in at any time.

HATSELL, BARON—Did ever Sarah Walker tell you that Mrs. Stout staid out all night?

MRS. MINCE—She hath said, she could not tell what time she came in, for she went to bed.

Cowper offered to prove that Gurrey, at whose house the other prisoners had stayed, had said that if he had gone to visit Mrs. Stout, meaning apparently, if he had gone to visit the mother after the daughter's death, the prosecution would not have taken place. To this he would answer that he never had gone to see her in his life.

Now, for a man officiously to make a new visit in the time of the assizes, one engaged in business as I was, and especially upon so melancholy an occasion; I say for me to go officiously to see a woman I never had the least knowledge of, would have been thought more strange (and justly might have been so) than the omission of that ceremony. For my part, I cannot conceive what Mr. Gurrey could mean, this being the case, by saying, that if I had visited Mrs. Stout, nothing of this could have happened.

HATSELL, BARON—Mr. Cowper, he is not the prosecutor, I think it is no matter what he said.

Sir W. Ashurst, Sir T. Lane, and Mr. Thompson were then called to Cowper's character, and described him as a humane, upright, and capable man.

This concluded the case against Cowper, and the case of Marson was next considered. In reply to a question from the judge, he explained that Stephens was the clerk of the paper in the King's Bench; that Rogers was steward of the King's Bench; and that it was their duty to wait upon the Lord Chief-Justice of the King's Bench out of town. On Monday they all went to the Lord Chief-Justice's house in Lincoln's Inn Fields, according to their custom, and all set out from there. Marson, being only an attorney in the borough court, could not go further with the others than Kingsland, and returned from there to his business in Southwark, where he attended the Court, as was his duty, and set out again at past four in the afternoon. On arriving at Waltham he met one Mr. Hanks, a clergyman, who was returning from attending the Lord Chief-Justice to Hertford, whom he persuaded to return with him to Hertford, on the plea that he did not know the way. They galloped all the way, and did not arrive at Hertford till eight. There they found the marshal, Stephens, Rogers, Rutkin, and others of the marshal's acquaintance at the coffee-house, from which they went to the Glove and Dolphin, and stayed

there till eleven o'clock. Rogers and the witness had a dispute about which of them should lie with Stephens at Gurrey's house, and they all went to Gurrey's to see what could be arranged, and to drink a glass of wine. Eventually Stephens, Rogers, and Marson, all stayed at Gurrey's; while Hanks and Rutkin went back to the marshal's. The party at Gurrey's drank three bottles of wine,

and afterwards, in jocular conversation, I believe Mr. Stephens might ask Mr. Gurrey if he knew of one Mrs. Sarah Stout? And the reason why he asked that question our witness will explain. I believe he might likewise ask what sort of woman she was? and possibly I might say the words, My friend may be in with her, though I remember not I did say anything like it; but I say there is a possibility I might, because I had heard she had denied Marshall's suit, and that might induce me to say, My friend may be in with her, for all that I remember. I confess Mr. Rogers asked me what money I had got that day, meaning at the Borough Court? I answered fifty shillings; saith he, we have been here a-spending our money, I think you ought to treat us, or to that purpose. As to the bundle mentioned I had no such, except a pair of sleeves and a neck-cloth. As to the evidence which goes to words spoken, the witnesses have fruitful inventions; and as they have wrested and improved the instances I have been particular in, so they have the rest, or otherwise forged them out of their own heads.

HATSELL, BARON—Mr. Rogers, what do you say to it?

ROGERS—We came down with the marshal of the King's bench, it rained every step of the way, so that my spatter-dashes and shoes were fain to be dried; and it raining so hard, we did not think Mr. Marson would have come that day, and therefore we provided but one bed, though otherwise we should have provided two, and were to give a crown for our night's lodging. We went from the coffee-house to the tavern, as Mr. Marson has said, and from the tavern the next way to our lodging, where there was some merry and open discourse of this gentlewoman; but I never saw her in my life, nor heard of her name before she was mentioned there.

STEPHENS—We never stirred from one another, but went along with the marshal of the King's bench, to accompany my lord chief-justice out of town, as is usual.

HATSELL, BARON—I thought it had been as usual for him to go but half the way with my lord chief-justice.

ROGERS—They generally return back after they have gone half the way, but some of the head officers go throughout.

STEPHENS—It was the first circuit after the marshal came into his office, and that is the reason the marshal went the whole way.

HATSELL, BARON—Did not you talk of her courting days being over?

PRISONERS—Not one word of it; we absolutely deny it.

STEPHENS—I never saw her.

JONES—Mr. Marson, did you ride in boots?

MARSON—Yes.

JONES—How came your shoes to be wet?

MARSON—I had none.

Hunt gave an account of how he was at the Old Devil Tavern at Temple Bar, on Sunday night, and Marson and three or four others of Clifford's Inn being there at the same time, discoursing of the marshal's attending the Lord Chief-Justice to Hertford, Marson said he too might be required to go; on which one of the company said, 'If you do go to Hertford, pray enquire after Mr. Marshall's mistress, and bring us an account of her;' and it was this discourse that gave occasion to talk of Mrs. Stout at Gurrey's house, which was done openly and harmlessly. This story was corroborated by one Foster, who had been at the Devil; and Stephens offered to call another witness to the same purpose, but was stopped by the judge.

Hanks was called, and gave the same account of his arrival in Hertford as Marson had already given. He was in Marson's company from the time he met him till he left him at his lodgings, at about eleven o'clock.

Rutkin was called by Marson to give an account of his coming to Hertford.

RUTKIN—My lord, I came to wait on the marshal of the King's Bench to Hertford, and when we were come to Hertford we put up our horses at the Bull, and made ourselves a little clean; we went to church, and dined at the Bull, and then we walked in and about the court, and diverted ourselves till about seven o'clock; and between seven and eight o'clock came Mr. Marson and Dr. Hanks to town, and then we

agreed to go to the Dolphin and Glove to drink a glass of wine; the marshal went to see an ancient gentleman, and we went to the Dolphin and Glove, and staid there till past ten o'clock, and after the reckoning was paid we went with them to their lodging, with a design to drink a glass of wine; but then I considered I was to lie with the marshal, and for that reason I resolved not to go in, but came away, and went to the Bull Inn, and drank part of a glass of wine and afterwards went to the next door to the Bull Inn, where I lay with the marshal.

Marson called witnesses to character, who swore that they had always had a good opinion of him, that they had never seen him but a civilised man, that he had been well brought up amongst them, and that they had never seen him given to debauchery.

Cowper said that he was concerned to defend the other prisoners as much as himself, and that there was something he wished to say in their behalf.

'The principal witness against them is one Gurrey; and I will prove to you, that since he appeared in this court, and gave his evidence, he went out in a triumphant manner, and boasted that he, by his management, had done more against these gentlemen than all the prosecutor's witnesses could do besides. To add to that I have another piece of evidence that I have just been acquainted with; my lord, it is the widow Davis, Gurrey's wife's sister, that I would call.

Mrs. Davis was asked by her sister to help her

lay the sheets for the men in Gurrey's house, and while she was doing so the gentlemen came into the room; it was then about ten, or something later. They had three quarts of wine and some bread and cheese, and then went to bed; and after that Gurrey went to fetch Gape, who lodged at his house, from Hockley's.

COWPER—I only beg leave to observe that Gurrey denied that he went for him.

HATSELL, BARON—Ay; but this signifies very little, whether it be true or false.

Various other witnesses were called, who gave all the prisoners excellent characters in their private and professional capacities.

JONES—My lord, we insist upon it, that Mr. Cowper hath given a different evidence now, from what he did before the coroner; for there he said he never knew any distraction, or love fit, or other occasion she had to put her upon this extravagant action. Now here he comes, and would have the whole scheme turned upon a love-fit. Call John Mason.

Mason, in answer to questions put to him by Mr. Stout and Jones, said that Cowper, before the coroner, had said that he knew no cause for Mrs. Stout's suicide; and that she was a very modest person. He was asked whether he knew any person she was in love with, and he said he knew but of one, and his name was Marshall, and he was always repulsed by her.

Archer was present at the inquest, and heard Cowper say that he knew no occasion of Mrs. Stout's death, nor of any letters.

COWPER—Then I must call over the whole coroner's inquest, to prove the contrary.

HATSELL, BARON—Did they ask him concerning any letters?

ARCHER—They asked him, If he knew of any thing that might be the occasion of her death?

HATSELL, BARON—I ask you again, if they asked him if he knew of any letters?

ARCHER—My lord, I do not remember that.

MR. STOUT—I would have called some of the coroner's inquest but I was stopped in it.

JURYMAN—We have taken minutes of what has passed; If your lordship pleases we will withdraw.

HATSELL, BARON—They must make an end first.

Mrs Larkin was called, and said that Rutkin came to her house between nine and ten, and that the marshal did not come in till an hour afterwards.

Mr. Stout desired to call witnesses to his sister's reputation; and *Jones* said that the whole town would attest to that.

Hatsell, Baron, then summed up. He said that the jury could not expect that he should sum up fully, but that he would notice the most material facts, and that if he omitted any thing, Jones or Cowper would remind him of it. He then recapitulated Sarah Walker's evidence, very briefly; and then went on:—

The other witnesses that came afterwards, speak concerning the finding of the body in the river, and tell you, in what posture it was. I shall not undertake to give you the particulars of their evidence; but they tell you she lay on her right side, the one arm up even with the surface of the water, and her body under the water; but some of her cloaths were above the water. You have also heard what the doctors and surgeons said on the one side and the other, concerning the swimming and sinking of dead bodies in the water; but I can find no certainty in it; and I leave it to your consideration.

Further, there were no signs of water in the body, and it was said that this was a sign that she was not drowned; but then it was answered that it might show that she had drowned herself, because if she wished to drown herself she would choke herself without swallowing any water.

The doctors and surgeons have talked a great deal to this purpose, and of the water's going into the lungs or the thorax; but unless you have more skill in anatomy than I you would not be much edified by it. I acknowledge I never studied anatomy; but I perceive that the doctors do differ in their notions about these things. . . . Gentlemen, I was very much puzzled in my thoughts, and was at a loss to find out what inducement there could be to draw in Mr. Cowper, or these three other gentlemen, to commit such a horrid, barbarous, murder. And on the other hand, I could not imagine what there should be to induce this gentlewoman, a person of plentiful fortune,

and a very sober good reputation, to destroy herself.'

But if they believed the letters that had been produced to be in her hand, there was evidence to show that although she was a virtuous woman, a distemper might have turned her brains, and discomposed her mind.

As to these three other gentlemen that came to this town at the time of the last assizes, what there is against them, you have heard; they talked at their lodging at a strange rate, concerning this Mrs. Sarah Stout, saying, her business is done, and that there was an end of her courting days, and that a friend of theirs was even with her by this time. What you can make of this, that I must leave to you; but they were very strange expressions; and you are to judge whether they were spoken in jest, as they pretend, or in earnest. There was a cord found in the room, and a bundle seen there, but I know not what to make of it. As to Mrs. Stout, there was no sign of any circle about her neck, which, as they say, must have been if she had been strangled; some spots there were; but it is said, possibly these might have been occasioned by rubbing against some piles or stakes in the river. Truly, gentlemen, these three men, by their talking, have given great cause of suspicion; but whether they, or Mr. Cowper, are guilty or no, that you are to determine. I am sensible I have omitted many things; but I am a little faint, and cannot remember any more of the evidence.

The jury then retired, and in half an hour

returned with a verdict of Not Guilty as to all the prisoners.

The acquittal in this case led to an appeal of murder, the most curious survival of the earliest English criminal procedure, which was not finally abolished till 1819. The effect of such a proceeding was that after an acquittal on an indictment for murder, the prosecutor might challenge the accused to an ordeal by battle. Accordingly, in the long vacation following the trial, Mrs. Stout, the mother of the dead woman, sued a writ of appeal out of Chancery, against Cowper, in the name of an infant who was her daughter's heir. The sealing of the writ was delayed, it is said to nearly the last possible day, a year after the alleged murder, for the purpose of keeping the matter in suspense as long as possible; and the consent of the mother of the infant to Mrs. Stout's being named as his guardian for the purpose, was obtained from her by a fraudulent representation that the object of the proceeding was to obtain the deceased woman's property for him. On discovering what its real effect was, she and her friends applied to one Toler, the under-sheriff of Hertfordshire, for the writ, and on his giving it up to them, burnt it. On a rule being obtained for the return of the writ, and it appearing that Toler had delivered it to the infant's mother, he was adjudged guilty of a gross contempt, and

heavily fined. Holt, Lord Chief-Justice, said on this occasion that

he wondered that it should be said that an appeal is an odious prosecution. He said he esteemed it a noble remedy, and a badge of the rights and liberties of an Englishman. The court of king's bench, to show their resentment, committed Toler to the prison of the king's bench for his fine, though the clerk in court would have undertaken to pay it. And Holt, chief-justice, said to Toler, that he had not been in prison long enough before, and that he might now, if he pleased, go to Hertford and make his boast that he had got the better of the king's bench.

Afterwards Mrs. Stout petitioned the Lord Keeper for another writ; the infant and his mother presenting a counter-petition disowning their former writ as sued forth without their consent. After an argument before a full court it was decided that the Court had power to grant a new writ, but that it would be unjust to grant one under the present circumstances, because, among other reasons, the appellant and his mother had renounced the writ as soon as they understood its nature, and there was no proof that the appellees had been privy to their action.

SAMUEL GOODERE AND OTHERS

SAMUEL GOODERE AND OTHERS

On the 18th of March 1741, at the Bristol Gaol-delivery, Samuel Goodere,[1] Matthew Mahony, and Charles White were indicted for the murder of Sir John Dineley Goodere, the brother of the first-named prisoner. They were tried before

[1] Samuel Goodere (1687-1741) entered the navy in 1705, served through the War of Spanish Succession, but in 1719 was found guilty by a court-martial of having been very much wanting in the performance of his duty in the attack on St. Sebastian in the same year. He was temporarily appointed to another ship for rank in 1733. He was then living with his father, who had quarrelled with John; and apparently John had quarrelled with his wife, who was supported against him by Samuel. The father's will disappointed both sons, and John, having cut off the entail of his estate during his son's life, after his death announced his intention of leaving it to one of the Footes, a cousin of the actor, which probably led to his murder. Samuel left two sons; it seems doubtful whether they succeeded to the baronetcy. The elder died insane. The younger became a poor knight at Windsor, and dropped the name of Goodere. He made himself conspicuous by the oddity of his behaviour. He believed that a small sum of money expended in law-proceedings would realise a fortune, and that that money would be obtained through a wife. He therefore frequented crowded places, and on seeing any woman or girl he did not know would present her respectfully with a printed proposal of marriage. He died in 1809.

Serjeant Michael Foster.[1] The trial was adjourned to the 26th on account of Goodere's health, when there appeared for the prosecution *Vernon*, and for the prisoner *Goodere*, *Shepard* and *Frederick*. The other prisoners were undefended.

Vernon opened the case. He began—

May it please you, Mr. Recorder, and you, gentlemen that are sworn on the jury, I am counsel for the King against the prisoners at the bar, who stand indicted for the murder of sir John Dineley Goodere; they are also charged on the coroner's inquest with the same murder; and though it is impossible for human nature not to feel some emotions of tenderness at so affecting a sight as now presents itself at the bar; yet, gentlemen, should the guilt of this black and frightful murder be fixed upon the prisoners (as from my instructions I fear it will be), pity must then give way to horror and astonishment at the baseness and barbarity of the fact and circumstances; and our sorrow ought to be that, through the lenity of the laws, the unnatural author and contriver of so shocking a piece of cruelty, and this, his brutal accomplice in the ruffianly execution of it, should be to share the common fate of ordinary malefactors.

[1] Sir Michael Foster (1681-1763) entered Exeter College 1705, was called to the Bar in 1713, and practised locally at his native town of Marlborough. He became Recorder of Bristol in 1735, and a puisne judge of the King's Bench in 1745. He enjoyed a great reputation as a master of Crown Law, and was the author of the well-known *Discourses* on that subject.

He then proceeds to point out that the indictment alleges that Mahony strangled the deceased, and that Goodere was present aiding and abetting him in the act; that therefore it would be immaterial for the jury which of the two actually committed the act, if they were acting together; and that it would not be material whether they strangled the deceased with a rope, a handkerchief, or their hands, 'so the kind of death be proved.' Goodere was Sir John's brother, and there had long been a quarrel between them owing to various causes, particularly because Sir John had cut off the entail of a property in Worcestershire, to which Goodere would otherwise have been the heir in default of Sir John's issue. He had recently been appointed captain of the *Ruby* man-of-war, and in January last she was lying in the King's road, within the county of Bristol. Sir John had been ordered to Bath for his health, and had made an engagement to call, on his way there, at the house of Mr. Jarrit Smith, in Bristol, to transact some business. Goodere had asked Smith to arrange a meeting between him and his brother to effect a reconciliation, and accordingly this visit, which was to take place on Tuesday the 13th of January, had been fixed upon for the purpose. On Monday the 12th, Goodere and Mahony called at the White Hart Inn, near the foot of College Green, in view of, and almost opposite to, Smith's house;

and Goodere, commending the view from a closet above the porch, ordered breakfast to be prepared for him there the next day. On Tuesday, Goodere, accompanied by Mahony, and a gang of men belonging to a privateer called the *Vernon*, whom he had hired to assist him in seizing Sir John, 'but whom one would have thought, the name of that gallant admiral should have inspired with nobler sentiments,' came to the White Hart, where Goodere went upstairs to the closet he had ordered, and the others posted themselves below to watch for Sir John. He soon arrived, armed with pistols, and followed by a servant, but only made a short stay at Mr. Smith's, promising to come again the next Sunday. He was too well protected for it to be advisable to interfere with his movements, but Goodere's men, at his order, followed him a little way down the hill as he left the house. Mr. Smith afterwards told Goodere that his brother would return the next Sunday, and advised him to be in the way, that he might bring them together. Goodere accordingly made all his arrangements to effect his purpose. He ordered one Williams, a midshipman, to bring up the man-of-war's barge on Sunday, to leave it at a point a little below Bristol, with two or three men in charge of her, and to bring on the rest of the crew to meet him at the White Hart, explaining that he was going to bring some one

on board. Accordingly, on the Sunday, Goodere, the barge-men, and the privateersmen, all met at the White Hart; and at three in the afternoon Goodere went across to Mr. Smith's. There he met his brother, with whom he spent some time, conversing and drinking with him apparently on perfectly friendly terms. After half an hour, however, Sir John rose to go, followed by his brother; as soon as they got into the street Goodere made a sign to his men in the White Hart, who immediately seized Sir John, and partly led him, and partly carried him towards the boat which was waiting for them, as Goodere had ordered. Sir John made what resistance he could, calling out that he was ruined, and that his brother was going to take his life; his captors, however, explained to bystanders who tried to interfere that he was a murderer, whom they were arresting, and kept off the crowd by means of the bludgeons and truncheons with which they were armed. They could not prevent Sir John, however, from calling out, as he was being put into the barge, that he was going to be murdered, that the people by were to tell Mr. Smith, and that his name was Sir John Dineley. The privateersmen were landed lower down the river, and at about seven in the evening Sir John was brought on board the *Ruby*. There his brother pretended to the crew that he was a madman, and shut him up

in the purser's cabin, on to the door of which he had two new bolts fitted. A sentry was posted outside the door, but at some time after midnight he was relieved by Goodere himself, who admitted Mahony and White, keeping back another man from approaching it. A struggle was heard in the cabin, and Sir John calling out, 'Murder! must I die! Help, for God's sake! save my life, here are twenty guineas, take it!' Then Mahony called for a light, which was handed in to him by Goodere, while he still kept another man away from the cabin door by his cutlass. Goodere then withdrew to his cabin, and Mahony and White were put ashore in the ship's yawl. In the morning the ship's cooper, who had heard Sir John calling out, and in fact seen a part of the attack on him through a chink, broke open the door of the purser's cabin and found the dead body. Goodere was then arrested by the crew, and brought before the Mayor of Bristol, where he denied all knowledge of the matter.

Shepard asked that the witnesses for the prosecution should be ordered out of court.

Vernon replied that he had no right to this, and that as it would seem to cast a slur upon their honesty he objected to it being done.

Shepard admitted that he had no right to it, but asked it as a favour; on which all witnesses were ordered to leave the court, an exception

being made in favour of Mr. Jarrit Smith, who claimed a right to be present as he was prosecuting solicitor as well as a witness.

Chamberlayn was called, and said that about three weeks before the death of Sir John he was asked by Goodere to interpose with Mr. Jarrit Smith to bring about a reconciliation between him and Sir John. He went to Mr. Smith as he was asked to, and he promised to do all he could in the matter. The brothers had been at law a long while, and spent a great deal of money, and that was why Goodere wanted Mr. Smith to bring about a reconciliation between them.

Jarrit Smith was then called, and deposed that Mr. Chamberlayn had brought him the message he had described, and had brought Goodere to his house, and that he had promised him to do what he could to bring about a reconciliation.

Some little time after they were gone, I saw sir John, and told him that Mr. Goodere had applied to me to do all I could to reconcile them. Sir John seemed to speak much against it at first, and thought it would be to no purpose; for that he had been a real friend to the captain, who had used him very ill; but at last he was pleased to pass a compliment on me, and said, I cannot refuse anything you ask of me. He then mentioned several things the captain had said; and in particular told me that at the death of sir Edward Goodere, his father, Mr. Goodere, the prisoner, had placed several persons in the house

where sir Edward lay dead, in order to do him some mischief, and he apprehended to take away his life.

SHEPARD—I must submit it to the Court, that what sir John said at that time is not a matter of evidence.

THE RECORDER—It is not evidence, but perhaps it is introductory to something Mr. Smith has further to say; if it be not, it should not have been mentioned.

SMITH—And that he had endeavoured to set aside a common recovery, and made strong application to the Court of Common Pleas for that purpose.

SHEPARD—Whether this be evidence, I insist upon it that in point of law it is not, and it may have an effect on the jury.

THE RECORDER—I will take notice to the jury what is not evidence. Go on, Mr. Smith.

SMITH—After sir John had repeated several stories of this sort, he concluded at last (as I told you before), And why, Mr. Smith, if you ask it of me, I can't refuse. I saw Mr. Goodere soon after, and told him I had seen sir John and talked with him, and he was pleased to tell me, that he would see him, and bid me contrive a convenient place to bring them together. I told Mr. Goodere about the attempt to set aside the recovery. I wonder, said Mr. Goodere, he should mention anything of that, for I can set it aside when I please. I told him, I thought he could not; for, said I, I have a good opinion on it, and am to lend a large sum of money on the Worcestershire estate. He said, I wonder that any body will lend him money on that estate; I am next in remainder, and they will run a risk of losing their money, I do assure you; and he cannot borrow a shilling on it without my consent: but if my brother was reconciled, then, if

we wanted money, we might do it together, for he cannot secure it alone. He told me, that he should take it as a great favour, if I could fix a time as soon as I could to bring them together. Soon after I saw sir John, and he told me he was very deaf, and was advised to go to Bath, and then appointed to be with me on Tuesday, the 13th of January last, in the morning, when he would talk with me about the business of advancing the money on his estate. After this I saw Mr. Goodere, and told him that I had seen his brother; that he was to be with me on Tuesday, the 13th of January last, and desired him to be in the way, for sir John was always very punctual to his appointment; and if business or anything happened to prevent him he always sent me a letter. Mr. Goodere thanked me, and told me he would be in the way; and on the Tuesday morning sir John came to me on horseback, just alighted and came into my office. I asked him to sit down, which he refused, saying his head was bad; that he must go for Bath, having been advised to go there for some time, and then he did not doubt but he should be better. I told sir John, that his brother knew he was to be in town therefore hoped he would sit down a little, for that I had promised him to bring them together. He said, I can't now, but you shall see me again soon, and then I may do it. I asked him, when shall I see you again, to finish the business you and I are upon? the writings are ready, name your own time, the money will be paid. He appointed to be with me on Monday morning to settle that business; and said, I shall come to town the Saturday or Sunday before, and when I come I will let you know it: he then mounted his horse and rid off.

Shortly after (as I was going to the Tolzey) at, or under Blind-gate, I met Mr. Goodere, and told him I was glad to see him and that his brother had been in town. He said he had seen him and thought he looked better than he used to do. I told Mr. Goodere that his brother had appointed to be with me on Monday morning next on business, and I expected him to be in town either the Saturday or Sunday before. I then had many compliments from Mr. Goodere, and he said, how good it would be to make up the matter between him and his brother. I heard nothing of sir John being in town till Sunday the 18th of January last, in the morning, when he sent me a letter to let me know that he came to town the night before, and would be glad to call upon me at any time I would appoint. I sent him for answer, that I was to dine from home, but would return and be at home at three o'clock that afternoon. And as I was passing by, I stopt the coach at captain Goodere's lodgings in Princes Street. I asked if he was at home? Found him alone, and then shewed him sir John's letter. He read it, and asked the time I appointed. I told him three o'clock that afternoon. Said he, I think my brother writes better than he used to do. I said, Mr. Goodere, I think it would be best for you to be accidentally on purpose at that time at my house. No, says he, I don't think that will be so well, I think it would be better for you to send for me. I returned to my house, and my servant told me that sir John had called, and that he would be here again presently. Whilst my servant was telling this, sir John came in; I took him by the hand, and asked him how he did? I thank God, says he, I am something better; and after I have settled

this affair with you, I will go to Bath for some time, and then, I hope, I shall be better. I said, captain Goodere is waiting, I beg you will give me leave to send for him; you know you said you would see him. With all my heart, says sir John, I know I gave you leave. I then sent down a servant to captain Goodere's lodgings, to let him know sir John was with me, and desired him to come up. The servant returned, and said, Here is captain Goodere; on which I said, sir John, please to give me leave to introduce your brother. He gave me leave: captain Goodere came in, went directly and kissed him as heartily as ever I had seen any two persons who had real affection one for the other. I desired them to sit down. Sir John sat on one side of the fire, and captain Goodere on the other, and I sate between them. I called for a table and a bottle of wine, and filling a full glass, I said, sir John, give me leave to drink love and friendship. Ay, with all my heart, says sir John; I don't drink wine, nothing but water; notwithstanding, I wish love and friendship. Captain Goodere filled a bumper, and pledged it, spoke to his brother, and drank love and friendship with his brother's health. We sate some time, all seemed well, and I thought I could have reconciled them. The cork lying out of the bottle, captain Goodere takes up the cork in his hand, put it into the mouth of the bottle and struck it in very hard. I then said, though sir John will not drink wine, you and I will. No, says captain Goodere, I will drink water too, if I drink any more; and there was no more drank. After they had talked several things (particularly captain Goodere of the pleasantness of the situation of the estate in Herefordshire and goodness of the land) in a very pleasant

and friendly way, sir John rose up, and said, Mr. Smith, what time would you have me be with you to-morrow morning? I appointed nine o'clock. He said, Brother, I wish you well; then said to me, I will be with you half an hour before. Sir John went down the steps; the captain was following; I stopt him, and said, Pray don't go, captain, let you and I drink a glass of wine. No more now, I thank you, sir, said he. I think, said I, I have done great things for you. He paused a little and said, By God, it will not do; and in a very short time the captain went very nimbly down the steps. I followed him to the door, and observed him to go after sir John down the hill; and before he turned the churchyard wall, to be out of my sight, I observed some sailors come out of the White Hart ale-house, within view of my door, and they ran up to captain Goodere. I heard him say, Is he ready? (I thought he meant the boat), they said, Yes. He bid them make haste. Then they ran very fast towards the lower-green, one of them having a bottle in his hand; captain Goodere went very fast down the hill, and had it not been by mere accident I should have followed him (but some people think it was well I did not), for I promised my wife to return to the house where we dined in Queen's-square, where I went soon after.

MR. RECORDER—Mr. Smith, did they all go toward the lower green?

SMITH—No, Sir; but some towards the butts on St. Augustine's back. Sir John went that way, and captain Goodere followed him; but the men who came out of the ale-house went toward the lower green some of them. About 5 o'clock in the evening, as I was riding up the hill towards the College-green I ob-

served a soldier looked hard at me into the coach, as if he had something to say, and seemed to be in a confusion. I walked into the court, the soldier with me, and then he said, I am informed, Sir, your name is Mr. Jarrit Smith. Yes, says I, it is. (What I am now going to say, Mr. Recorder, is what the soldier told me.) He told me, that as he was drinking with a friend at the King's Head ale-house at the Lime-kilns, he heard a noise, and ran out to see what was the matter, when he saw a person dressed (as he described) like sir John's dress.

VERNON—Pray, Sir, how was sir John dressed?

SMITH—Sir John was dressed in black clothes, he had a ruffled shirt on, a scarlet cloak, a black velvet cap (for the sake of keeping his ears warm) and a broad-brimmed hat flapping. He described this exactly, and told me likewise, that the captain of the man-of-war and his crew had got the person into custody, and by force had put him on board the man-of-war's barge or boat lying near the Slip, by the King's Head; that the gentleman cried out, For God's sake if you have any pity or compassion upon an unfortunate man, go to Mr. Jarrit Smith, and tell him how I am used: and that the captain hearing him cry out, stopt his mouth with his hand.

MR. RECORDER—What did the soldier desire of you?

SMITH—The soldier desired me to enquire into it, for that he did not know the intention of taking off a gentleman in that way.

MR. RECORDER—Did you do any thing on that request of the soldier?

SMITH—Yes, Sir; it immediately occurred to me, that sir John, when he left my house, told me that

he was going to his lodgings. I went to his lodgings (which was at one Mr. Berrow's near the mint), I there asked for him, and related the story I had heard; they told me they had not seen him since he went to my house.

VERNON—Mr. Smith, Sir, will you inform us by what name the unfortunate gentleman (you are speaking of) was commonly called?

SMITH—Sir John Dineley Goodere; his mother was a Dineley, and there came a great estate from her side to him, which occasioned his being called by the name of Dineley.

VERNON—When sir John went from your house on Tuesday, was he alone, or had he any attendants with him?

SMITH—Sir John was well guarded; he had pistols, and I think his servant had pistols also.

VERNON—I think you told us but now, that sir John was to be with you on Sunday; pray, when did you let Mr. Goodere know it, Sir?

SMITH—I met captain Goodere that very day at Blind-gate, and told him of it; and he said, he had met his brother himself.

VERNON—Pray, Sir, did Mr. Goodere tell you, to whom the estate would go on sir John's death?

SMITH—Yes, he has often said he was the next remainder man, and that the estate would come to himself on his brother's death.

MR. RECORDER—Well, Mr. Goodere, you have heard what Mr. Smith hath said, have you any questions to ask him?

MR. SHEPARD—Mr. Recorder, what I have to ask of you, with submission, in behalf of Mr. Goodere, is, that you will indulge counsel to put his questions

for him to the Court, and that the Court will then be pleased to put them for him to the witnesses. It is every day's practice at the courts of Westminster, Old Bailey, and in the Circuit.

Vernon replied that the matter was entirely in the discretion of the Court, and that Shepard could ask for nothing as a matter of right.

The judges, I apprehend, act as they see fit on these occasions, and few of them (as far as I have observed) walk by one and the same rule in this particular; some have gone so far as to give leave for counsel to examine and cross-examine witnesses, others have bid counsel propose their questions to the court; and others again have directed that the prisoner should ask his own questions; the method of practice in this point is very variable and uncertain; but this we certainly know, that by the settled rule of law the prisoner is allowed no other counsel but the court in matters of fact, and ought either to ask his own questions of the witnesses, or else propose them himself to the Court.

He then asked Jarrit Smith one more question, to which he replied.

VERNON—Sir, I think you were present when Mr. Goodere was brought to Bristol after his brother's being killed; I 'd be glad to know whether you then heard him say anything, and what, concerning this foul business?

SMITH—I was present when Mr. Goodere was brought to Bristol after this murder happened, when he was asked (before the justices) about the seizing,

detaining and murdering sir John Dineley; and he then directly answered that he did not know that his brother was murdered or dead. He was then asked in relation to the manner of seizing him, and carrying him away; he said he knew nothing of it till he came to the boat, and when he came there he saw his brother in the boat; but he did not know that his brother had been used at that rate.

SHEPARD—Mr. Smith, Sir, you are speaking about sir John; by what name did you commonly call him?

SMITH—Sir John Dineley Goodere.

THE RECORDER—Mr. Goodere, have you any questions to ask Mr. Smith?

GOODERE—Yes, Sir. Mr. Smith, I ask you what sir John Dineley's business was with you, and how much money were you to advance?

SMITH—Five thousand pounds, Sir; and I told him that I was satisfied that it was a good title.

GOODERE—I ask you if you knew him to be a knight and a baronet?

SMITH—I can't tell; I never saw the letters patent.

GOODERE—Can't you tell how you styled him in the writings?

Vernon objected to this, because baronetage must be derived from letters-patent, and therefore could not be properly proved by Mr. Smith's personal knowledge; and added that it was not material, because the indictment alleged that the person murdered was Sir John Dineley Goodere, and the prosecution would prove that he usually went by that name.

To this *Shepard* answered that if the person

killed was a baronet, and was not so described, there was a misdescription, and the prisoners could not be convicted on that indictment.

Vernon then argued at some length that the necessity of setting out a personal description in an indictment applied only to the defendant, and that all that the law required in the description of the person on whom the offence was committed was a convenient certainty; and that a description by the Christian and surname sufficed. Besides, this was all begging the question, for as it did not appear in proof that the deceased was a baronet, he might, for all that appeared judicially, have been christened Sir John.

Had we called the deceased in the indictment sir John Dineley Goodere baronet, then, Sir, we should probably have been told that we had failed in proof of the identity of the person, for that the baronetage was in its creation annexed to, and made a concomitant on, the patentee's name of Goodere, and waited only on that name; and that the deceased, considered as a baronet, was not of the maternal name of Dineley, and so upon the matter no such person as sir John Dineley Goodere baronet ever existed *in rerum natura*.[1]

[1] After mentioning certain obsolete rules relating to indictments, Sir James Stephen says:—'I do not think that anything has tended more strongly to bring the law into discredit than the importance attached to such technicalities as these. As far as they went, their tendency was to make the adminis-

Shepard pointed out that they could not be expected to produce letters-patent to show that the deceased was a baronet, because the prisoner had not been allowed to see, or to have a copy of his indictment; and that it was only on hearing it read that the defence became aware that the deceased was not described as a baronet. He therefore hoped that Goodere might be allowed to ask the question he proposed of Mr. Smith, who having been familiar with Sir John, and seen all his papers and title-deeds, must know the certainty of his title and degree.

The Recorder held that it was sufficient if the deceased was described by his Christian and surname; and that the question proposed to the witness was improper, for that it was not material whether the deceased was a baronet or not.[1]

Morris Hobbs was the landlord of the White Hart. He could see Mr. Jarrit Smith's house from his windows; and had seen the prisoners before.

tration of justice a solemn farce. Such scandals do not seem, however, to have been unpopular. Indeed, I have some doubt whether they were not popular, as they did mitigate, though in an irrational, capricious manner, the excessive severity of the old criminal law' (*Hist. Crim. Law*, vol. i. p. 284).

[1] It is curious that Shepard did not take the point that the prisoner was not described as a baronet, which he in fact became on his brother's murder. Till recently such an objection would have been fatal.

VERNON—I would not lead you in your evidence, but would be glad you'd give an account to Mr. Recorder, and the jury, whether Mr. Goodere (the gentleman at the bar) applied to you about coming to your house; if so, pray tell us when it was, and upon what occasion?

HOBBS—The 12th of January (which was on Monday) captain Goodere and Mahony came to my house; captain Goodere asked my wife, Have you good ale here? She said, Yes; he also asked, What place have you over-head? I answered, A closet, a place where gentlemen usually sit to look out. Will you please to let me see it, says he? Yes, Sir, said I. I went up to shew it, he and Mahony went up; the captain said it was a very fine prospect of the town; he asked for a pint of ale, I drawed it, and he gave it to Mahony, he drank it: and then the captain asked my wife, whether he might have a dish of coffee to-morrow morning? Sir, said she, it is a thing I don't make use of in my way; but, if you please, I will get it for you. Then he told her, he would be there to-morrow morning by about nine o'clock. Mahony was by then.

VERNON—Did you hear this discourse pass between your wife and Mr. Goodere?

HOBBS—Yes, I did, and then the captain paid for his pint of ale, and went away; and the next morning (being Tuesday the 13th of January) he came again to my house before my wife was up, and I was making the fire (for I keep no servant). I did not know him again, I thought he was another man; says he, Landlord, can't you open them windows in the parlour? I told him, I would, and so I did; he looked out, and I thought that he had been looking for somebody

coming from College prayers. He asked where my wife was? Says I, she is a-bed: because, said he, I talked with her about having some coffee for breakfast. I told him, she should come down presently, but I had much rather he would go down to the coffee-house, where he would have it in order. No, says he, I will have it here. My wife came down, he asked if he might go upstairs where he was before; he went up, and by and by Mahony and three men more came in; I did not know Mahony's name; when they came in, the captain was above stairs; he directed me to make his men eat and drink whatever they would, and he would pay for it; I brought them bread and cheese, they eat what they pleased; Mahony went backwards and forwards, up stairs and down several times; he went out, but where, or what for, I did not know.

VERNON—Did Mahony, when he went up stairs, go in to Mr. Goodere?

HOBBS—Yes, several times; Mahony put the coffee, and some bread and butter, and made the toast, and did everything for the captain, I thought he had been his footman. When the captain had breakfasted, and had made the men welcome, he shifted himself (some porter brought fresh clothes to him). By and by a man rid along, who, I believe, was sir John Goodere's man, with pistols before him; I heard somebody say that it was his man: and soon after the captain had shifted himself, Mahony went out about a quarter of an hour, and came back sweating, and went up to the captain; and I looking out of the window saw the man on horseback, and leading another horse (which I took to be his master's) and by and by sir John mounted, and rid down between my house and the

church; and I had some glimpse of him, and heard the captain say, Look well at him, but don't touch him.

THE RECORDER—This you heard the gentleman above stairs say to the four men below?

HOBBS—Yes, Sir, he spoke these words to the four who came in.

VERNON—Did sir John and his man appear to have any arms?

HOBBS—Yes, Sir, they had both pistols before them.

VERNON—Those men that were along with Mahony, do you know what ship they belonged to?

HOBBS—There was a young man, I believe something of an officer, came to my wife, and asked her, Is the captain of the man-of-war here? She answered that she did not know; but there was a gentleman above, and there were six other men besides in the other room in another company, which I did not know belonged to the captain, until he ordered six pints of ale for them. The captain ordered entertainment for ten men.

VERNON—Where were those six men?

HOBBS—In the kitchen; they did not belong to the man-of-war, nor were not in company with the other four.

VERNON—Now, will you proceed to give an account what followed upon Mr. Goodere's saying, Look well at him, but don't touch him.

HOBBS—As soon as sir John went down the hill, this Mahony stept up to the captain and came down again, and he and the other three in his company went down the hill, and the captain followed them; the clothes which the captain pulled off were left in

the room; when the captain was going out at the door with his sword and cloak, I thought I was pretty safe of my reckoning, because of his clothes being left. The captain said at the door, Landlady, I will come back and pay you presently.

VERNON — How long was it before Mr. Goodere returned to your house?

HOBBS—He came again in about a quarter of an hour: When he came again, he went upstairs, changed a guinea, he asked what was to pay? I told him four shillings and one penny half-penny, and then went away. About an hour and a half after Mahony and the other came again, sweating, and said they had been a mile or two out in the country. Mahony asked credit for a tankard of ale, and said his master would come up on Saturday following, and then he would pay for it: Well, said I, if he is to come up on Saturday, I will not stand for a tankard of ale; but if he don't come, how shall I have my reckoning? Says Mahony, I live at the Scotch arms in Marsh-street. Well, said I, I will not deny drawing you a tankard of ale, if you never pay me. Said he, You had best get the room ready against Saturday, and make a fire, and just dust it.

VERNON—Pray, when Mr. Goodere went away from your house was he in the same dress as when he came that day?

HOBBS—No, Sir. When he came there he had a light-coloured coat, and he looked like a country farmer at his first coming in; but when he was out, he had a scarlet cloak on, wore a sword, and had a cane in his hand; a porter brought him the things.

VERNON—Do you know any thing of what happened on the Sunday following?

HOBBS—Yes, Sir; the Sunday morning Mahony came to my house, having trousers, a short jacket and leather cap on, asked for a quart of ale, this was Sunday: My wife said, Don't draw any more upon tick. Mahony gave a sixpence and paid for it, and said, See that the room be clear, the captain will be up in the afternoon, and then he will be here; And as he was going out of the house, he said to me, If you fortune to see that gentleman go up with the black cap before that time, do you send a porter to me to the Scotch arms. I told him I had no porter, and could not send. About 3 o'clock in the afternoon when he came again with a person who had a scalled face, and one or two more, a man who lodged in the house came and told me, that they wanted to go up stairs; but I would not let them, because it was in service-time. They all went into the parlour, and had a quart of ale, and when that was drunk, Mahony called for another; and then eight or nine men more came and called for ale, and went into the parlour, but still kept looking out; and one of them being a little fellow, I don't know his name, kept slamming the door together, ready to break the house down. Says I, Don't break my house down about my ears, don't think you are in Marsh-street; then the little fellow came up as if he was going to strike me, as I was coming up out of the cellar with a dobbin of ale in my hand, for a gentleman going to the college; I saw this gentleman (pointing to the prisoner Samuel Goodere) and the deceased walk down the hill, I looked after them, and so did Mahony; and then all those men rushed out, and followed them. Mahony paid the reckoning, and went away: I ran in to see after my tankard for I was more afraid of losing that

than the reckoning. And that is all I do know from the beginning to the end.

VERNON—How long did he continue at your house on the Sunday?

HOBBS—I believe, Sir, an hour and a half; and there was some or other of them still looking out and waiting at the door.

THE RECORDER—You say that Mahony desired you that if you saw the gentleman in the black cap go by, to send a porter; who did you apprehend that gentleman to be?

HOBBS—The gentleman that rode down the Tuesday.

ONE OF THE JURY—To what place were you to send the porter?

HOBBS—To the Scotch arms in Marsh-street, where Mahony lodged, if the gentleman in the black cap did go up to Mr. Smith's.

VERNON—I think, you say, you saw Mr. Goodere on the Sunday go down the hill, after the gentleman in the black cap?

HOBBS—I did, Sir; but nobody at all was with him.

GOODERE—Did you see me at all that day?

HOBBS—Yes, Sir, I saw you go into Mr. Jarrit Smith's; and when you came down the hill, after the gentleman in the black cap, you called out to Mahony and his company, and bid them to look sharp.

GOODERE—Did you see anybody with me that day? I was not at your house that day.

HOBBS—I did not say you were; but as you was going to Mr. Jarrit Smith's, I heard one of your men say, There goes our captain, or else I had not looked out.

MAHONY—I beg leave, my lord, to ask him, who it was that the captain bid Mahony to look sharp to?

HOBBS—The gentleman with the black cap.

THE RECORDER—Was the gentleman in the black cap, at whose going by they all rushed out, the same gentleman whom you had seen before go to Mr. Jarrit Smith's?

HOBBS—Yes, Sir, but Mahony gave half-a-crown for my reckoning, and as they rushed out so hastily, I was afraid they had taken away my tankard; for which reason I went to look after it, and saw no more.

Thomas Williams, sworn.

VERNON—Mr. Williams, I think you belonged to the *Ruby* at the time when this melancholy affair happened?

WILLIAMS—Yes, Sir.

VERNON—What station were you in?

WILLIAMS—I was ordered to walk the quarter-deck.

VERNON—Will you give an account of what you know in relation to the ill-treatment of sir John Dineley Goodere? Tell all you know about it.

WILLIAMS—I came up on Sunday the 18th day of January last for my commander, went to his lodgings, he was not at home. I was told there that he dined that day at Dr. Middleton's and he was just gone there. I went to Dr. Middleton's after him, and he was just gone from thence; I then returned to his lodgings and found him there; I told him the barge was waiting for his honour. He asked me if I knew the river, and if I knew the brick-yard at the lime-kilns? I told him that I knew the lime-kilns, and at last I recollected that I did remember

the brick-yard he meant. That is well enough, says he. While I was there, Mahony came up to him, and the captain desired of me to go down stairs, for he wanted to speak to Mahony in private. I went down stairs, by and by Mahony came down and went away; then I went up to captain Goodere again, when he directed me to get all the hands together, and go down into the barge, and, says he, let it be landed at the brick-yard. He asked me, if I knew the White Hart in the College Green? I told him, I did, and he directed me to take eight men up with me to the White Hart, and let two remain in the boat for I have a gentleman coming on board with me. I did as I was ordered; and when I came to the White Hart, I saw Mahony and some of the privateer's men with him there in a room; I did not like their company; I went into the kitchen; I asked the landlord to make me a pint of toddy; he asked me, whether I would have it hot or cold; I told him a little warm; he was going about it but before it was made, Mahony and the privateer's men rushed out of the house: I seeing that, followed them; they had the gentleman in possession before I came to them, and were dragging him along. I asked them what they were at? One of the privateer's men told me, if I did not hold my tongue he would throw me over the key into the river, and immediately captain Goodere came there himself; The privateer's men asked what they should do with him, and he directed them to take him on board the barge. I followed them down the butts, the gentleman cried out Murder, murder! Mr. Stephen Perry, the anchor-smith, came out of his house, and asked me what was the matter; I told him I did not know: Mahony said he was a

murderer, he had killed a man on board the man-of-war, and that he had run away; they had carried him before a magistrate, and he was ordered back to the man-of-war to be tried by a court-martial.

THE RECORDER—Was the captain within hearing at the time Mahony said that?

WILLIAMS—He was just behind.

THE RECORDER—Was he within hearing?

WILLIAMS—He was; and when they had brought him into the barge captain Goodere desired to have the cloak put over sir John to keep him from the cold, but sir John said he did not want a cloak, neither would he have it. The privateer's men wanted me to put them on the other side the water, but I said I would not without the captain's orders. They asked the captain, and he directed me to do it, and I put them ashore at the glass-house, and just as we came over against the hot-wells, there was a gentleman standing whom sir John knew, to whom sir John cried out, Sir, do you know Mr. Jarrit Smith? But before he could speak any more, the cloak was thrown over him to prevent his crying out, and the captain told me to steer the barge on the other side, until we got clear of the noise of the people; and when we were got clear, he directed me to steer the boat in the middle, as I ought to do. I obeyed his orders.

THE RECORDER—Who threw the cloak over him?

WILLIAMS—The captain. And the captain being as near to sir John as I am to your lordship, sir John asked the captain what he was going to do with him? Says the captain, I am going to carry you on board, to save you from ruin, and from lying rotting in a gaol.

VERNON—And what reply did sir John make to that?

WILLIAMS—He said, I know better things, I believe you are going to murder me; you may as well throw me overboard, and murder me here right, as carry me on board ship and murder me. No, says the captain, I am not going to do any such thing, but I would have you make your peace with God. As I steered the boat, I heard all that passed. We brought sir John on board between 7 and 8 o'clock, he could hardly go up into the ship, he being so benumbed with cold; he did go up of his own accord, with the men's assistance.

VERNON—How was he treated on board the man-of-war?

WILLIAMS—Sir, I don't know how they treated him after he went on board the ship. I was excused from watching that night so I went to my hammock; but after I was got out of my first sleep, I heard some people talking and walking about backwards and forwards: I was surprised; at last I peeped out of my hammock, and asked the centinel what was o'clock. He said, between two and three. And then I saw captain Goodere going down the ladder from the deck towards the purser's cabin, but for what intention I know not. I believe he came from his own cabin.

THE RECORDER—Whereabout is the purser's cabin?

WILLIAMS—The purser's cabin is in a place called the Cockpit, the lower steps of the ladder is just by the door of the purser's cabin.

THE RECORDER—And it was that ladder you saw the captain go down, was it?

WILLIAMS—Yes, Sir, it was.

VERNON—Mr. Williams, you have not told us all the particulars of sir John's treatment between the seizing and carrying him to the barge.

WILLIAMS—One of the men had hold of one arm, and another the other, and a third person was behind shoving him along.

VERNON—Where was captain Goodere then?

WILLIAMS—He was just behind him.

VERNON—How near was he to him?

WILLIAMS—Sometimes he was as near to him as I am to you.

THE RECORDER—How many were there in the company, do you think, in the rope-walk, when they were carrying sir John along?

WILLIAMS—There were five of the privateer's men, and Mahony made six, and there were nine belonging to the barge; about sixteen in all.

RECORDER—At what distance were you?

WILLIAMS—At a pretty great distance; I walked just before them; I saw them take him along in the manner I have said; I heard sir John cry out murder several times as he went, as they took him along the rope-walk.

In answer to Goodere, the witness said that he slept on the starboard side of the gun-room, and that he could see people coming down into the cockpit, because the gun-room came unusually far out; there was no other cabin but the purser's in the cockpit. He did not know where the ship lay, being but a foremast man.

Samuel Trivett, sworn.

VERNON—Will you give an account to Mr. Recorder and the Jury of what you know relating to this business?

TRIVETT—On Sunday the 18th of January last, I was at a public meeting in the rope-walk; I heard a noise of people cried, Damn ye, stand off, or else we will knock your brains out; I stepped up, and asked what right they had to carry a man along after that manner? I followed them: their answer was, it was a midshipman who had committed murder, and they were taking him down to the ship to do him justice; other people likewise followed, enquiring what was the matter the gentleman was behind, and ordered them to make more haste.

VERNON—Look upon the prisoner at the bar, Mr. Goodere; is that the gentleman that ordered them to make more haste?

TRIVETT—I believe that is the man, my lord. On the gentleman's ordering them to make more haste, five or six of them caught him up in their arms, and carried him along; and as they were got down about the corner of Mr. Brown's wall, he insisted upon their making more dispatch, and then they hurried him as far as captain Osborn's dock. By that time his clothes were ruffled and shoved up to his arm-pits; they put him down, and settled his clothes, and then I saw his face, and knew him to be sir John Dineley: he cried out murder several times, and said, they were taking him on board to kill him, he believed. As they were going with him along, he cried out to Mrs. Darby, For God's sake assist me, they are going to murder me. I told Mrs. Darby it was sir John Dineley: she said she knew him; the cloak was then over his face. As they got him further, he called out to a little girl, to get somebody to assist him, for they were going to murder him. They pushed him along to Mrs. New's house, and made a little stop there,

and then they brought him to the water-side, where was a boat; they put out a plank with ledges nailed across: he was ordered to go on board the boat; they got him on board, and put him to sit down in the stern-sheet: then he cried out, For God's sake, gentlemen, if any of you know Mr. Jarrit Smith in the College-green, tell him my name is sir John Dineley. One of the men put his cloak and covered him, and before he could say any more, that gentleman (pointing to the prisoner Goodere) took his hand and put it on his mouth, and would not let him speak any further, and ordered the boat to be pushed off, which was done; and the tide making up strong, the boat got almost to the other side. I heard that gentleman (pointing as before) say, Have you not given the rogues of lawyers money enough already? Do you want to give them more? I will take care that they shall never have any more of you; now I'll take care of you.

THE RECORDER—Prisoners, will either of you ask this witness any questions?

GOODERE—No, I never saw the man before in my life.

Thomas Charmsbury, sworn.

CHARMSBURY—On Sunday the 18th of January last, between the hours of four and five in the afternoon, I was on board the ship called the *Levant*, lying in Mr. Thompson's dock; I heard a noise coming over the bridge of the dock, and I saw a man in a scarlet cloak, and a parcel of people, some before and some behind, guarding of him, and he made a noise. I went towards them, to see what was the matter, and at Mr. Stephen Perry's counting-house (they rested)

I asked, what was the matter? They said, he had killed a man on board a man-of-war; that he had run away; and they had him before a magistrate, and he was ordered on board the king's ship to be carried round to London to take his trial. Mr. Perry (on hearing the noise) came out and saw him; says Mr. Perry, Gentlemen, do you know what you are about? I would not be in your coats for a thousand pounds, for it is 'squire Goodere. They threatened to knock down any that should come near; a fellow, I take him to be Mahony, came up to me, and threatened to knock me down several times. They took and carried him as far as captain James Day's lofts and warehouse, where he keeps his hemp; and there they rested him again, and threatened to knock down any that should come near them. Then said Mahony, Damn ye, here comes the captain. Immediately I turned about, and saw a gentleman with his cane poised in one hand, and his sword in the other; he had a dark shag coat and yellow buttons, whom I take to be that gentleman the prisoner at the bar. They took up the man in the scarlet cloak again, and carried him so far as coming out from the lower College-green into the rope-walk: the prisoner Goodere came up to them and ordered them to mend their pace; they took him up again, and carried him as far as Brown's garden, at the lower end of the rope-walk, as fast as they could well carry him, where they settled his clothes, and in the meanwhile the prisoner Goodere came up to them again, and ordered them to mend their pace. With much difficulty they got him between the gate and stile, and carried him as far as the warehouse at the corner of the glass-house, there they rested and settled his clothes again; then they took him up, and

carried him down to the Lime-kilns, as far as the lower part of the wall below madam New's; and then brought him down to a place opposite to the King's-head, and then they put him on board a boat (I take it the man-of-war's barge) having ten oars, and they handed him in. After, the prisoner Goodere went into the boat after him, and set sir John on the starboard-side, and the prisoner Goodere on the larboard-side; then sir John cried out, Murder! you gentlemen that are on shore, pray tell Mr. Jarrit Smith that my name is Dineley, and before he could say Goodere the gentleman took up the flap of the cloak, threw it over the face of sir John, and stopped his mouth; and says he, I will take care of you, that you shall not spend your estate; and ordered the barge to be put off; and then he took the gentleman's cloak from his shoulders, and put it on his own.

THE RECORDER—Who was it that stopped his mouth with his cloak?

CHARMSBURY—That gentleman the prisoner at the bar. The boat was so full, had so many people in it, that they were obliged to row but with eight oars: and when they proceeded down the river, it being about three quarters flood, and the gentleman continually crying out, they went out of sight, and I saw no more of them.

Mrs. Darby, who lived at the lime-kilns, saw Sir John forced along between two men; he was crying out, Murder, murder! for the Lord's sake save me, save me, for they are going to kill me. She knew Sir John very well; she had mended his chair for him last summer; she was told that the gentleman at the bar was the

captain of the man-of-war; he was dressed in a dark drab-coloured coat, and his waistcoat was trimmed with gold. She heard Sir John cry out something as he was being hurried into the boat; but she could not hear what.

William Dupree was drinking at the King's Head with a friend, and a young woman who was reading at the window said she heard a great noise, on which they went out, and saw a company of men forcing a gentleman along, the prisoner Goodere coming behind them. They said that he had murdered a man, and that they were taking him on board for justice. They put him on the yawl, while Captain Goodere stood by. He cried out, 'For God's sake! go and acquaint Mr. Jarrit Smith, for I am undone, they will murder me.' The witness went back to the King's Head, where the people advised him to go to Mr. Jarrit Smith and inform him of it, which he did. When Sir John cried out he saw Goodere put his hand on his mouth.

Theodore Court, Master of the Ship, sworn.

VERNON—Will you tell Mr. Recorder and the jury what you know concerning the death of sir John Dineley Goodere?

T. COURT—On the 18th of January last, being Sunday, the barge went up to fetch captain Goodere from Bristol, and about seven of the clock in the evening he came on board, and when he came into the gangway, says he, How do you all do, gentlemen?

Excuse me, gentlemen, from going the right way to-night, for I have brought an old mad fellow on board and I must take care of him. I saw a gentleman with a black cap coming up the ship's side, and his groans shocked me, so that I could not help him; he looked much surprised as a person used ill; as soon as he was on board he was taken into custody, and carried by the captain's orders down to the cock-pit, and put into the purser's cabin, and a centinel ordered upon him; and I saw him no more at that time. Next morning I was told that the captain's brother was murdered, and that the captain had given Charles White and Mahony leave to go on shore.

THE RECORDER—By whose direction was he put into the purser's cabin?

T. COURT—The captain himself went down and saw them put him in.

VERNON—Whereabout in the ship is the purser's cabin?

T. COURT—In the cock-pit.

VERNON—Was it a place where gentlemen who came on board commonly lay?

T. COURT—No, nobody had laid in it for a considerable time. The next morning the cooper met me, and said, Here is fine doings to-night, Mr. Court! Why, what is the matter? said I. Why, said he, about three o'clock this morning they went down and murdered sir John. The ship was in an uproar; the Cooper said, if Mr. Perry (the lieutenant) did not secure the captain, he would write to the board; we had several consultations in the ship about it. The captain sent for me to breakfast with him: I accepted his invitation; I can't say but he behaved with a very good name to all the people on

board. About ten o'clock Mr. Perry, myself, and the other officers, with the cooper, consulted about securing the captain. Mr. Perry cautioned us not to be too hot; for, said he, if we secure the captain before we know sir John is dead, I shall be broke, and you too. We send for the carpenter, and desired him to go down and open the cabin-door, the centinel who stood there having said it was lock'd; the carpenter went down, opened the cabin-door, and came up, and said sir John was murdered; and that he lay on his left side, with his leg up crooked. I told them, gentlemen, there is nothing to be done before the coroner comes; and therefore we must not touch him: whereupon the door was ordered to be fastened up; we then consulted how to take the captain, and a method was agreed on for that purpose. And as soon as the captain was taken, he declared he was innocent of it, that he knew not that his brother was murdered. When the coroner came, I saw the deceased, and my heart ached for him.

The Recorder—Who was it put the centinel upon sir John?

T. Court—The captain ordered it to be done.

Vernon—Is it usual to place a centinel at the purser's cabin-door?

T. Court—No, it is not; unless there be somebody there under confinement.

Vernon—Is there any other cabin near the purser's?

T. Court—Yes, there is the slop-room just by; there the cooper and his wife lay that night: there is just a little partition of about half-inch deal, parting the slop-room from the place where sir John lay, confined.

VERNON—Pray, will you tell us whether any and what discourse passed between Mr. Goodere and you, about sailing, and when it was?

T. COURT—Sir, in the morning he asked me, Will the wind serve to sail? He said, he had another pressing letter from the lords of the admiralty to sail as soon as possible. I told him that the wind was west-south-west, and that we could not go out to sea; for no pilot would take charge of the ship I believed. And as this is a harbour where a pilot is allowed, I don't pass for this place; otherwise I must have observed his orders.

VERNON—Did he acquaint you how far or to what part, he would have you sail?

T. COURT—Yes, he said, if he got no further than the Holmes, he did not care; and asked me if it was safe riding there. I told him it was not; for it was foul ground for such a ship as ours.

THE RECORDER—Mr. Goodere, will you ask this witness any questions?

GOODERE—What cabins are there in the cock-pit?

T. COURT—I know no cabins there but the purser's cabin and the slop-room, etc.

VERNON—Call Mr. Williams.

William Williams produced a watch which he had found in a vault in Back Street. Culliford, who kept the Brookware Boat on the Back, had reported at the Council House, when he was examined there, that a watch and some money had been left at his house; but his wife, when asked for them, denied the watch, but afterwards admitted that she had thrown it into

the vault where the witness afterwards found it.

T. Court said that the captain had had a watch like the one produced. In answer to Goodere, he said that there were in the cockpit the steward's room, the purser's cabin, and the slop-room. The ship had been moored on Thursday the 15th of January. When Sir John was murdered she lay in the King Road; the witness then described the position of the ship with greater detail.

Vernon interposed to state that the ship was in the King Road, which was well known to be within the franchise of the city: the sheriffs of the city continually executed writs there; and such a serious matter ought not to be decided on a side wind.

Duncan Buchanan, one of the crew of the *Ruby*, was ordered to go to the White. Hart on Tuesday the 13th of January, and there were Mahony and the privateer's men drinking hot flip. He saw a gentleman come out of Mr. Smith's; he was mounted, and had pistols before him; he was followed by a servant, also armed. Some of the men ran out, and Goodere followed them and ordered them to follow the gentleman. On the 18th, the barge came alongside the ship, about seven in the evening, with the gentleman in it. The witness stood in the gangway to receive him.

When he came up, I heard him make a moan, and the captain said, I have brought a madman on board, bring him along, I will bring him to his senses by-and-by. I saw them take him along the gangway. You must not mind what he says, said the captain; and he was ordered down to the purser's cabin: I was ordered centinel there. About twelve o'clock the captain sent for me to come up to him, and I laid down my sword and went up, and Mahony was there with him; and there was a bottle of rum and a glass before them: the captain asked me to drink a dram, I thanked him and drank. He asked me how his brother was? I told him he groaned a little; says the captain, I know the reason of that, he is wet, and I am coming down by-and-by to shift him with dry stockings: so I left the captain and Mahony together. Some time after the captain came down to me as I was at my post at the purser's cabin; he asked if his brother made a noise; I told him no; upon which the captain listened a little time at the door, and then said, Give me the sword, and do you walk upon deck, for I want to speak to my brother in private. Soon after this Mahony went down, and very soon after Mahony was down, I heard a great struggling in the cabin, and the gentleman cry out Murder! I then thought the gentleman had been in one of his mad fits; but now I suppose they were then strangling him. As I was walking to-and-fro in the gun-room, I looked down, and saw the captain take the candle out of the lanthorn, which was hanging up there, and he gave the candle into the cabin.

The Recorder—Where was Mr. Goodere when you heard the cry of murder?

BUCHANAN—In the cock-pit by the purser's cabin-door, with the sword in his hand.

THE RECORDER—What time of the night was this?

BUCHANAN—Between two and three o'clock; I lighted a candle at the lanthorn in the gun-room, and was going down to the captain with it, as supposing him to be without light; and as I was going down with it, the captain held up his sword, waved it, and said, Go back, and stay where you are.

THE RECORDER—You said that sir John Dineley cried out Murder! Was that before you offered the candle to the captain?

BUCHANAN—Yes, Sir; it was before.

THE RECORDER—How long?

BUCHANAN—About a quarter of an hour.

THE RECORDER—How long did the cry of murder continue?

BUCHANAN—About three or four minutes; soon after the captain had ordered me to keep back, he called for a candle, and I carried one down, and he gave me the sword, and bid me stand upon my post; and said he, if my brother makes any more noise, let him alone and send for me; and he locked the purser's cabin-door, and took the key away with him; and in the morning the doctor's mate, the cooper, and I consulted together about it; and I was willing to know, if sir John was dead or not: and when we peeped into the cabin, we saw him lying in a very odd sort of posture, with his hat over his face, and one of his legs lay crooked; upon which we concluded he was dead.

THE RECORDER—How long were you off your post from first to last?

BUCHANAN—I can't tell exactly.

THE RECORDER—Recollect as well as you can?

BUCHANAN—About three quarters of an hour.

THE RECORDER—And could you see who was at the purser's cabin-door all that time?

BUCHANAN—Yes, Sir; I saw the captain stand at the foot of the ladder at the door, with a drawn sword, from the time I went up to the time I came down again; he locked the door, and carried the key away with him.

VERNON—Pray, were there any bolts on the purser's cabin-door?

BUCHANAN—Yes, there were bolts on the door; they were put on soon after sir John came on board: sir John was in that cabin when they were put on.

VERNON—You say you heard a noise and outcry of murder; how far were you from the cabin-door when you heard that cry of murder?

BUCHANAN—I was walking to-and-fro the gun-room.

VERNON—How far is that from the purser's cabin-door?

BUCHANAN—As far as I am from you.

VERNON—Whom did you see go into the purser's cabin to sir John?

BUCHANAN—I saw Mahony go in there.

VERNON—Did you see any other person go in besides Mahony?

BUCHANAN—No, I did not; I saw Mahony go in just before the cry of murder, but no other person.

VERNON—Do you know any thing about securing the captain?

BUCHANAN—Yes, I will tell you what happened then. We went and secured him. As soon as he was laid hold of, he cried out, Hey! hey! what have I done? We told him his brother was murdered, and

that he had some concern in it. He said, What if the villains have murdered my brother, can I help it? I know nothing of it.

GOODERE—Did you see me in the cabin at all?

BUCHANAN—No, Sir, I don't say you were in the cabin.

THE RECORDER—Mr. Goodere, the witness does not say he saw you in the cabin, but at the door, and with a sword in your hand, and that you handed in a light after the cry of murder was over.

GOODERE—I could not have been in the cabin without Buchanan's seeing me go in, because he stood at the bulkhead of the gun-room.

THE RECORDER—Mahony, will you ask this witness any questions?

MAHONY—Are you certain that I was in the cabin when you heard the groans?

BUCHANAN—I am positive you were there in the purser's cabin when I heard the murder cried out.

Daniel Weller, sworn.

VERNON—I think you are the carpenter belonging to the *Ruby* man-of-war?

WELLER—Yes, Sir, I am.

VERNON—Give an account to Mr. Recorder and the jury of what you know relating to this business.

WELLER—The 18th of January last, about seven o'clock in the evening, the captain came on board in the barge; as I attended him, I observed he seemed in a pleasant humour, he came upon the deck at once, and said he had brought a poor crazy man on board, who had been the ruin of himself and family, and that he had now brought him on board to take care

of him: he took him down to the cock-pit, and having been there a little while, one of my people came and asked for some bolts; I asked, What for? He told me it was to put on the outside of the purser's cabin-door, to bolt the crazy gentleman in. I gave him a bolt; after he had nailed it on, he came and wanted another: I had another, gave it to him, and went down to see the bolts put on. Sir John cried out, What are you doing, nailing the door up? I answered, No. I ordered the door to be opened, to turn the points of the nails. The door being opened, sir John asked whether the carpenter was there? I told him I was the man. The centinel told me no-body must go in there; however, I went in, while they turned the points of the nails. Sir John bid me sit down, and asked me, What does my brother mean by bringing me on board in this manner, to murder me? No, Sir, says I, I hope not, but to take care of you. He asked me, if his brother told me that he was mad? I saw no more of him till next morning.

VERNON—And what did you see then?

WELLER—Next morning the lieutenant sent me down to see if sir John was dead. I went down and asked the centinel for the key; he told me the captain had been there in the night, and had taken away the key in his pocket. I broke open the cabin-door, and sir John was lying on one side dead, with his right leg half up bent, his hat was over his face, with blood bespattered about his mouth and nose. I went directly up, and told the lieutenant of it.

THE RECORDER—By whose orders did you put the bolts on the door?

WELLER—One of my people came to me for bolts, and told me he was ordered by the captain to put the

bolts on; and none of them ever came for any thing to be done, without an order of an officer.

Edward Jones, sworn.

VERNON—Mr. Jones, I think you are the cooper of the ship *Ruby*?

JONES—Yes, Sir.

VERNON—Were you on board upon Sunday the 18th of January last?

JONES—Yes, Sir, I was.

VERNON—In what cabin did you lie that night?

JONES—I had no cabin, but I made bold to lie in the slop-room that night, having my wife on board.

VERNON—Pray what is that you call the slop-room?

JONES—It is like a cabin.

VERNON—How near is the slop-room to the purser's cabin?

JONES—Nothing but a thin deal-partition parts it from the purser's cabin.

VERNON—Will you relate to Mr. Recorder and the jury what you know about the murder of Mr. Goodere's brother; tell the whole you know concerning it.

JONES—About Wednesday or Thursday before this happened, the captain said to me, Cooper, get this purser's cabin cleaned out, for he said he expected a gentleman shortly to come on board. I cleaned it out; and on Sunday evening the gentleman came on board, when the people on deck cried, Cooper, shew a light. I brought a light, saw the captain going down the cock-pit ladder, the gentleman was hauled down: he complained of a pain in his thigh by their hauling him on board. The captain

asked him, if he would have a dram? He said no; for he had drank nothing but water for two years. The captain ordered Mahony a dram; he drank it; he also ordered one Jack Lee to put two bolts on the purser's cabin-door. The gentleman walked to-and-fro the purser's cabin while they were nailing the bolts on. He wanted to speak with one of the officers. The carpenter told him he was the carpenter. Says the gentleman, Do you understand what my brother Sam is going to do with me? And said, His brother had brought him on board to murder him that night. The carpenter said, He hoped not, but what was done was for his good. The captain said, They must not mind what his brother said, for he had been mad for a twelvemonth past. And the captain went up again, and went into the doctor's room. I went to bed about eight o'clock. Some time about eleven o'clock at night I heard the gentleman knock, and said, He wanted to ease himself; to which the centinel gave no manner of heed. Is it not a shame, said he, to keep a gentleman in, after this manner? At last, some other person spoke to the centinel, and says, Why don't you go up and acquaint the captain of it, that the gentleman may ease himself? Soon after Mahony comes down with a bucket, for the gentleman to ease himself. Mahony sat down in the cabin, and he and the gentleman had a great deal of discourse together; the gentleman said he had been at the East-Indies, and told what he had got for his merit; and Mahony said, some by good friends. I heard the gentleman, after Mahony was gone, pray to God to be his comforter under his affliction. He said to himself, he knew that he was going to be murdered, and prayed that it might come to light by one means

or another. I took no notice of it, because I thought him a crazy man. I slept a little, and about two or three o'clock my wife waked me. She said, Don't you hear the noise that is made by the gentleman? I believe they are killing him. I then heard him kick, and cry out, Here are twenty guineas, take it; don't murder me; Must I die! must I die! O my life! and gave several kecks with his throat, and then he was still. I got up in my bed upon my knees: I saw a light glimmering in at the crack, and saw that same man, Mahony, with a candle in his hand. The gentleman was lying on one side. Charles White was there, and he put out his hand to pull the gentleman upright. I heard Mahony cry out, Damn ye, let us get his watch out; but White said he could not get at it. I could not see his pockets. White laid hold of him, went to tumbling him up to get out his money, unbuttoned his breeches to get out his watch; I saw him lay hold of the chain; White gave Mahony the watch, who put it in his pocket; and White put his hand into one of the gentleman's pockets, and cursed that there was nothing but silver: but he put his hand in the other pocket, and there he found gold. White was going to give Mahony the gold: damn ye, says Mahony, keep it till by-and-by.

The Recorder—In what posture did sir John lie at that time?

Jones—He lay in a very uneasy manner, with one leg up; and when they moved him, he still remained so, which gave me a suspicion that he was dead. White put his hand in another pocket, took out nothing but a piece of paper, was going to read it. Damn ye, said Mahony, don't stand to read it. I

saw a person's hand on the throat of this gentleman, and heard the person say, 'Tis done, and well done.

THE RECORDER—Was that a third person's hand, or the hand of Mahony or White?

JONES—I cannot say whether it was a third person's hand or not. I saw but two persons in the cabin, I did not see the person, for it was done in a moment. I can't swear I saw any more than two persons in the cabin.

THE RECORDER—Did you take notice of the hand that was laid on sir John's throat?

JONES—I did.

THE RECORDER—Did it appear to you like the hand of a common sailor?

JONES—No; it seemed whiter.

VERNON—You have seen two hands held up at the bar. I would ask you to which of them it was most like in colour?

JONES—I have often seen Mahony's and White's hands, and I thought the hand was whiter than either of theirs; and I think it was neither of their hands by the colour of it.

THE RECORDER—Was sir John on the floor, or on the bed?

JONES—On the bed; but there was no sheets: it was a flock-bed, and nobody had lain there a great while.

VERNON—How long did the cries and noise which you heard continue?

JONES—Not a great while: he cried like a person going out of the world, very low. At my hearing it, I would have got out in the mean time, but my wife desired me not to go, for she was afraid there was somebody at the door that would kill me.

VERNON—What more do you know concerning this matter, or of Mahony and White's being afterwards put on shore?

JONES—I heard some talking that the yaul was to go to shore about four of the clock in the morning, and some of us were called up, and I importuned my wife to let me go out. I called, and asked who is centinel? Duncan Buchanan answered, It is I. Oh, says I, is it you? I then thought myself safe. I jumpt out in my shirt, went to him; says I, There have been a devilish noise to-night in the cabin, Duncan, do you know any thing of the matter? They have certainly killed the gentleman, what shall us do? I went to the cabin-door where the doctor's mate lodged, asked him if he had heard any thing to-night? I heard a great noise, said he. I believe, said I, they have killed that gentleman. He said, he believed so too. I drawed aside the scuttle that looked into the purser's cabin from the steward's room, and cried, Sir, if you are alive, speak. He did not speak. I took a long stick, and endeavoured to move him, but found he was dead. I told the doctor's mate that I thought he was the proper person to relate the matter to the officer, but he did not care to do it then. If you will not, I will, said I. I went up to the lieutenant and desired him to come out of his cabin to me. What is the matter, said he? I told him I believed there had been murder committed in the cock-pit, upon the gentleman who was brought on board last night. Oh! don't say so, says the lieutenant. In that interim, whilst we were talking about it, Mr. Marsh the midshipman came, and said, that there was an order to carry White and Mahony on shore. I then swore they should not go on shore, for

there was murder committed. The lieutenant said, Pray be easy, it can't be so; I don't believe the captain would do any such thing. That gentleman there, Mr. Marsh, went to ask the captain if Mahony and White must be put on shore? And Mr. Marsh returned again, and said, that the captain said they should. I then said, it is certainly true that the gentleman is murdered between them. I did not see Mahony and White that morning, because they were put on shore. I told the lieutenant, that if he would not take care of the matter, I would write up to the Admiralty, and to the mayor of Bristol. The lieutenant wanted the captain to drink a glass of wine: the captain would not come out of his cabin; then the lieutenant went in first; I followed him. I told the captain that my chest had been broke open, and I desired justice might be done. Then I seized him, and several others came to my assistance.

THE RECORDER—Mr. Goodere, do you ask Mr. Jones any questions?

GOODERE—Do you know whether the midshipman was sent away on the king's business, or else only to put those two men on shore?

JONES—I know not, you were the captain of the ship.

THE RECORDER—Mahony, will you ask this witness any questions?

MAHONY—Did you see me lay hands on the gentleman?

JONES—Yes, I did, as I have already related.

Margaret Jones, sworn.

VERNON—Mrs. Jones, pray acquaint Mr. Recorder and the jury what you know about the murder of sir John Dineley Goodere (the gentleman ordered by Mr. Goodere into the purser's cabin).

MRS. JONES—About seven o'clock in the evening, the 18th of last January, the captain (having been on shore) came on board, and came down into the cock-pit, and asked if the cabin was clean? My husband answered, yes. On which the captain gave orders to bring down the gentleman; and the captain said to the doctor, Doctor, I have got an old mad fellow here, you must doctor him up as well as you can. They brought the gentleman into the cabin, the captain asked him how he did now? The gentleman complained that he had a great pain in his thigh, he was hurted by the men's hauling him as they had done. The captain asked him if he would drink a dram of rum? He answered, No; for he said he had drank nothing but water for two years past. The captain gave a dram to several persons there; and he gave orders for some sheets to be brought; and he said to Mahony, As his clothes are wet, do you pull them off. And the gentleman said to Mahony, Don't strip me, fellow, until I am dead. The gentleman said, Brother Sam, what do you intend to do with me? The captain told him that he brought him there to save him from rotting in a gaol. About ten o'clock Mahony was left there; the gentleman desired him to go; but Mahony said, I have orders to abide here, to take care of you. The gentleman said to Mahony, I can abide by myself. Before the captain went away, he bid Mahony to see if his brother had any knife about him. The gentleman gave up his knife to Mahony, desired him to take care of it, for it was his son's knife. The gentleman asked about the knife several times in the night. About twelve o'clock I went to sleep; about two o'clock I wakened again: I heard the gentleman talk to Mahony, but Mahony advised the gentleman to go

to sleep. He said, I cannot sleep. They talked together a great while. Mahony said, I am to go on shore in the morning, and if you have any letters to send to Bristol, I will carry them for you. I heard somebody say to the gentleman, You must lie still, and not speak a word for your life. Some minutes after I heard a great struggling; who it was, I don't know. The gentleman cried out, Murder; help for God's sake! and made several kecks in his throat, as though somebody was stifling him. I shook my husband, told him that somebody was stifling the gentleman. I heard two people in the cabin whispering; I don't know who they were. The gentleman cried out murder again, Help for God's sake! He said, I have twenty guineas in my pocket, here take it; must I die! Oh, my life! And just about that time, before he was dead, somebody from the outside offered to come into the cabin, but I heard one of the persons on the inside say, Keep out, you negro; and then a great noise was made; I thought the cabin would have been beat down. Some few minutes after the gentleman had done struggling, a candle was brought: I soon got up, and looked through the crevice: I saw a man, who I believe to be White, take the gentleman by the coat, and pulled him upright. I saw Mahony with a candle in his hand; I observed the other to put his hand in the gentleman's pocket. One of them said, Damn ye, pull out his watch. Then I saw the person take hold of the watch-string and pull it out, and he said to the other, Here 'tis, take it, and put it into thy pocket. Then one of them put his hand in another pocket, and took it out, said, Here 's nothing but silver; and then he searched another pocket, and said, Here it

is; and pulled out a green purse: soon after that, the door was unbolted, I heard a person say, Where shall I run? who I believe was Mahony; and the other, Charles White, said, Follow me, boy. And they went to go upon deck through the hatch-hole, which is an uncommon way; and that is all I know.

THE RECORDER—Mr. Goodere and Mahony, do either of you ask this witness any questions?

GOODERE—No.

MAHONY—No.

James Dudgeon, sworn.

VERNON—Mr. Dudgeon, I think you are the surgeon's mate belonging to the *Ruby*?

DUDGEON—Yes, Sir.

VERNON—Give Mr. Recorder and the jury an account what you know relating to this matter.

DUDGEON—I am very sorry that I should come on this occasion against captain Goodere, because he ever behaved towards me in a genteel manner. The week before this happened, I was told by one of the officers, that the captain was going to bring his brother on board; and on Sunday the 18th of January, about the dusk of the evening, the barge came down to the ship. I was at that time walking the quarter-deck; some of our people seeing the barge a-coming they said, Our captain is coming on board with his brother sure enough: but instead of coming up the quarter-deck, the captain went down upon the main-deck, and I still kept walking on the quarter-deck, expecting to see the gentleman when he went into the great cabin, but I afterwards found that he was ordered down to the cock-pit. Soon after, I went down there myself; and the captain being there, said, Doctor, I

have brought a madman to you, I don't know what we shall do with him, but we must make the best of him that we can; and Mahony came down likewise. The captain sent his steward for a bottle of rum, Mahony had a dram of it. The captain asked sir John if he would have one? Sir John replied, No; for, said he, I have not drank any thing of that nature for two years past; he groaned several times. There was then one Cole at the foot of the ladder, to whom also the captain gave a dram; then there was a centinel put upon the cabin-door; but Cole asked the captain if he might go in, and the captain said he might. The old gentleman made a noise as the captain went up the ladder; the captain told him, We have now brought you on board, and will take care you shall want for nothing. After the captain was gone, Cole wanted to go in, but the centinel would not let him; telling him that his orders were to let none in but Mahony: however, Cole went up and got leave of the captain to go in, and he did go in. Soon after this the captain came down again to the cock-pit, and came into my place, and sat down; and after talking of things promiscuously, he said, he believed it would be proper for me to go and feel his brother's pulse; or else, Doctor, he said, do you chuse to leave it alone till to-morrow morning? I made answer, that to-morrow morning might be the best time; because the gentleman may be much confused by being brought down on the water. Come, said he, let us go in now; for I believe it will be as well. If you please, Sir, said I, I will; so the centinel opened the door, and we both went in. Immediately after, the captain went out again, and forthwith the door was shut upon me: which very much surprised me, to think that the captain should

leave me with a madman, and I observed the captain to peep through; I then asked the gentleman what he mostly complained of? and felt his pulse. He then made some groans, and told me, that he had got a great cold last week at Bath, and that he felt a severe pain in his head. I was going to ask him some more questions, but the captain called me, and said, Don't ask him any more questions, but only feel his pulse. Then the centinel opened the door, and I came out, and the captain and I went into my place again. Well, doctor, said he, how do you find his pulse? Why, Sir, said I, his pulses are very regular. Why, said he, I believe he was pretty much hurried upon the water. Then the captain went up the ladder, and a little while after he came down again; there were two midshipmen with me in my place, and when the captain came in, they went to go out, but he desired one of them to stay, for he had something to say to him, because he was to go up for letters in the morning; so we sat down, and talked of various things; but I informed the captain that the old gentleman have had hard lodging to-night. Why, said he, I would put another bed in there, and have given him clean sheets, but he would not hear anything of this kind. Then said he to me, Doctor, I believe it will not be amiss to take an inventory of everything he has about him, for fear it should be reported that he is robbed. I replied, Sir, it may not be amiss. By-and-by, Cole came tumbling down the ladder, the midshipman opened the curtain to see who it was; Captain, said he, that is Cole, and I then told that Cole had been drunk a great part of that day. Soon after that the captain opens the curtain, and sees Mahony stand by the centry. Mahony, said he, I

thought you had been about the thing which I sent you to do; which I take to be getting the money out of the gentleman's pocket. No, Sir, said he, I chuse to do it after he is asleep. Very well, said the captain. Then the captain spoke to the midshipman, and said, Mr. Marsh, You are to go up for letters to-morrow, and if anyone takes notice of what was done to-day, you may tell the people that it is my brother, and he is very much disordered in his brains, and I have got him on board in hopes of getting relief for him. Sometimes, Doctor, says he, he can talk as well as you or I; but at other times, he is very much out of order. About eight o'clock I was for going to bed, but did not till an hour and a half after; and about that time sir John was making a great noise, and asking who is without the door, what must I do my affairs in the cabin? What a shame is it? Will not you let me have anything to do it in? but nobody made any reply. Upon which I said to the centinel, why don't you answer the gentleman? Are not you ashamed of it? Upon which, I suppose, one went up to the captain and he came down, and said, he was sorry that the gentleman should make such a disturbance; but he hoped, that the first night would be the worst: upon which the captain went up, and Mahony went in; and I heard the gentleman and him talking together, and he asked Mahony, what his brother was going to do with him? What, says he, does he say I am mad? Formerly I used to be so, but now I have not tasted any thing stronger than water these two years. But, said he, to be sure these fellows are not sailors who attacked me this day; they are not sailors, for, if so, they are sadly degenerated from what sailors were

formerly, for I myself have been at sea, and might have been a commander. About half an hour after ten, I fell asleep, but was very uneasy. About twelve the centinel was sent for to go up to the captain, but soon came down again; and about half an hour after two I awaked, hearing some stir in the cock-pit; and I heard Mahony's voice in the cabin, saying, Lie still and sleep, Sir. In a short time after that I heard a struggle, and sir John cried out, Here is 20 guineas for you, take it; must I die? And it seemed to me, by his speaking, that they were stifling his mouth. Upon which the person who stood centry upon the cabin turned the key, whereupon Mahony cried out in a terrible pucker, Damn ye, keep the door fast. Upon which I spake, and said, What is the matter? what a noise is that? And the person who stood centinel made answer, Nothing at all, nothing at all; so I lay still a while, and all was pretty quiet. A little time after that, Mahony called for a light, and the cabin-door was opened, and a light handed in; the cock-pit was then in darkness, so all was quiet again for some time. Soon after that the cabin-door was opened again, and I heard as if two or three people were coming out of the cabin, and heard Mahony say, which way shall I go? And somebody made answer, you may go through the hatch-hole. He repeated the question, which way shall I go? and the other answered, by the ship-side. I then thought somebody had been murdering sir John sure enough, and they are carrying off his body that way; at the same time a person stept up the cock-pit ladder, and I heard the captain's voice, and he said, Centry, if he makes any more noise, let me know it; but I thought within myself, that he was past

that. After this was past, all was pretty quiet, and the centinel kept walking without my room: I was cautious of speaking to him, not knowing who he was; but soon after, one of the captain's servants came down to the store-room for liquor, and he asked the centry whether he had made any noise lately? To which he replied, You may tell the captain that the gentleman hath been at the lock. About half an hour after, the person who was upon the watch came to me, and asked, if I had any commands on shore, for the boat was going up? I told him, No; but perceiving by his voice who it was, I called him to come to me in the dark, and I whispered, and said to him, Mr. Heathorne, here hath been a hellish cabal to-night, I believe they have murdered the gentleman; doth Mahony go on shore? He answered, that he did; then, said I, the thing is done. I then asked who was the centry without my door? and he told me; whereupon I called the centry to me, and asked him, what noise and cabal is this that hath been here to-night? He said, He did not know; but the captain, said he, hath been down several times to-night, and that he had taken the sword from him. Just after this, in came Edward Jones, the cooper, and his wife shaking and trembling; and said, White and Mahony had murdered the gentleman sure enough. I told them, I did believe they were both going on shore; and I would, said I, have you tell the lieutenant what you saw of the matter, and let him know that I am of the same opinion with you: but do you first go into the steward's room, and draw the scuttle, and then you'll see whether he is dead, or no. Upon which they went and drawed the scuttle, and a cat fled in their face, and they found the gentleman lay

in the same posture as White and Mahony left him. I then bid them go and tell the lieutenant the matter, that those fellows might be prevented from going ashore; but yet, said I, we can't stop them neither, seeing they have the captain's orders. Then went Jones up forthwith, and I believe, told the lieutenant; and I also stept up to him just after, and told him, that I believed sir John was actually murdered; for, said I, there have been a terrible noise in the cock-pit to-night, and the captain himself was there this morning when 'twas almost three o'clock, and the men that were with him are going on shore. The lieutenant answered, that he could not stop these men from going ashore, because the captain hath given them leave; so, said he, we must let it alone till morning, to see whether the gentleman is dead, or no. About eight o'clock in the morning I went to him again; but he told me it was best to defer it till we did see whether the captain sends down to him, or not. It is, said he, no way proper for us to think of seizing the captain, till we see that the gentleman is actually dead, and have reason to think he is murdered. When the captain's breakfast was ready, he sent for the lieutenant and me to come and breakfast with him: accordingly we did; and soon after there was a shore-boat came towards us, and then Mr. Chamberlayn came on board, and went to the lieutenant's cabin; and the lieutenant told that gentleman, that they were then going to seize the captain, for it was believed that he had been accessary to the murder of his brother. Immediately a message was brought by one of the men, that sir John was dead: upon which the captain was forthwith seized by eight or ten men.

VERNON—How far was your cabin from the purser's?

DUDGEON—I can't say certainly, but believe about three yards.

VERNON—Did you view the body of the deceased whilst he lay dead in the purser's cabin?

DUDGEON—I did.

VERNON—And did you find any visible marks of violence upon him?

DUDGEON—Sir, I saw no rope, but he had a neck-cloth about his neck, and there were some marks in his neck, which looked like the scratching of nails; and I believe that he was strangled, the blood came out of his nose and mouth.

William Macguinis was in his hammock when Sir John was brought aboard, but was called up at twelve o'clock to stand sentinel in the gun-room.

I had not been long on my post before I saw the captain come down; and soon after I saw Mahony, that man there (pointing at the prisoner Mahony), also come down. I stopt him, and asked him where he was going? Damn your blood, you son of a bitch, what is that to you? How busy you make yourself. And when he came to the bottom of the cock-pit ladder I heard him say to another man, Come here, this is the way. But who it was he spake to, I know not. This was a little after two o'clock. The captain espied me, he made towards me, and waved his naked cutlass, and said, Stand back! stand back!

The captain was down in the cockpit then. Buchanan had been sentinel in the cockpit, but had been released by the captain. The

witness saw Mahony go into the purser's cabin, and afterwards saw the captain and Mahony come up again from the cockpit; it was then about three o'clock.

Walker found a watch in the necessary house in the Brockware Boat, a public-house on the Back, kept by Culliford. He searched for it by the order of the justices; when he found it, the watch was in one place, and the case in another, about a yard off.

Sarah Culliford, of the Brockware Boat, received the watch from Mahony. She had it in her possession about two hours before and two hours after he was taken up.

This young man (meaning the prisoner Mahony) was drinking in my house, he pulled out the watch, delivered it to me, and desired me to keep it for him until he did call for it; some time after I had business to go out, I went into town, and had the watch in my pocket; when I came back, my children told me that the constable had been there to search the house for it, which much surprised me; I went and threw the watch into the necessary house for fear I should come into trouble.

JOHN FUSSELL—I had this handkerchief from Mahony, on the 19th of January last, the night when we took him, I found it on his neck; when he was seized he took it off; I took it out of his hand, it was bloody then as it is now, I put it into my pocket.

John Mitchel, the chief clerk to the Town Clerk, produced the examination of Matthew

Mahony, taken before the Mayor, voluntarily signed by Mahony in the Mayor's presence, and signed by the Mayor.

Clerk reads the Examination in these words:

City and county of Bristol, to wit. The voluntary Examination and Confession of Matthew Mahony, a native of Ireland, aged about 21 years. This Examinant confesseth and saith, That about sixteen or seventeen days ago, and several times since, he was desired by Mr. Goodere, captain of the *Ruby* man-of-war, now lying at King-road, in the county of the city of Bristol, to seize his, the captain's, brother, sir John Dineley Goodere, bart., and bring him on board the said man-of-war; and that on Tuesday last, this examinant, and the crew belonging to the man-of-war's barge, and Edward Mac-Daniel, John Mac-Graree, and William Hammon, privateer's men, were placed by the said captain at the White-Hart alehouse, opposite St. Augustine's Church, in order to seize sir John Dineley Goodere that day; but it so happened that the captain forbid them to do it then. And that on Sunday last, this examinant, the said barge's crew, or the greatest part of them, and George Best, cock-stern of the barge, the said Edward Mac-Daniel, John Mac-Graree, William Hammon, and one Charles Bryer, privateer's men as aforesaid, were again placed at the White-Hart aforesaid, to seize the said sir John Dineley Goodere, and waited there for some time; and he coming out of Mr. Jarrit Smith's house, and coming under St. Augustine's church-yard wall, this examinant and his comrades pursued him, and near the pump there they came up with him, and

told him there was a gentleman wanted to speak with him; and he, asking where the gentleman was, was answered, a little way off, and he went quietly a little way; but no one appearing, he resisted and refused to go; whereupon this examinant and comrades sometimes forcibly hauled and pushed, and at other times carried him over St. Augustine's butts, captain Day's rope-walk, and along the road to the hot-well (captain Goodere being sometimes a little behind, and sometimes amongst the crowd all the way), till they came to the slip where the barge lay. But sir John was very unwilling to go, made the utmost resistance, and cried out murder a great many times; and when he was put into the barge, called out and desired somebody would go to Mr. Jarrit Smith, and tell him of his ill-usage, and that his name was sir John Dineley; whereupon the captain clapt his hand on sir John's mouth to stop him speaking, and told him not to make such a noise, he had got him out of the lion's mouth (meaning the lawyer's hands), and would take care he should not spend his estate; and bid the barge men row away, which they did; and in their passage to the man-of-war, the two brothers bickered all the way. But when they came to the man-of-war, sir John went on board as well as he could, and the captain took him down into the purser's cabin, and stayed a little time with him, and treated him with a dram of rum, and then left him for a considerable time; and in the interim sent for this examinant into his, the captain's cabin, and there told this examinant he must murder his brother, for that he was mad, and should not live till four o'clock in the morning; and this examinant reasoning with him, and telling him he would not be concerned and that he thought

he had brought him there with intent only to bring him to reason, and take care that he should not spend his estate in law, and to have a perfect reconciliation: but the captain still insisting, that this examinant had taken him, he should do it; and this examinant then saying, he was not able to do it of himself, the captain replied, if this examinant could get nobody else, he and this examinant must do it themselves. And then ordered him to call one Elisha Cole; and he being too drunk to undertake such an affair, bid this examinant call one Charles White, a very stout lusty fellow, and the captain gave him a dram, and bid him sit down, and soon gave other drams, and asked him if he could fight, and told him, Here is a madman, he must be murdered and thou shalt have a handsome reward. And this examinant, the said Charles White, and the captain, all being agreed to murder the said sir John Dineley Goodere, the captain then proposed the method, and produced a piece of half-inch rope about nine foot long, and Charles White having made a noose in the rope, the captain said, applying himself to this examinant and the said Charles White, You must strangle him with this rope, and at the same time gave the handkerchief now produced, that in case he made a noise, to stop his mouth; and said, I will stand sentinel over the door whilst you do it; and accordingly instantly went out of his own cabin, and turned the centinel from the purser's cabin-door, and let this examinant and White into the purser's cabin, where sir John Dineley Goodere was lying in his clothes on a bed. The captain having pulled to the door, and standing centinel himself, the said White first strangled sir John with his hands, and then put the rope about sir John's neck and

hauled it tight, and sir John struggled, and endeavoured to cry out, but could not. And this examinant confesses, that whilst White was strangling sir John, this examinant took care to keep him upon the bed, and when one end of the rope was loose, this examinant drew and held it tight; and thus each bore a part till sir John was dead; and they having rifled the deceased of his watch and money, knocked at the door to be let out; and the captain called out, Have you done? they replied, Yes. He opened the door, and asked again, Is he dead? And being answered in the affirmative, and having a light, swore, by God, he would be sure he was dead; and then went in himself, and returning, locked the door, and put the key in his pocket, and they all went together to the captain's cabin again, and there this examinant gave the captain sir John's watch, and the captain gave this examinant his own watch in lieu of it; and then the captain gave them both some money, and White afterwards gave this examinant eight guineas as part of the money he took out of the deceased's pocket, and then the captain ordered them to be put on shore in his own boat. And further this examinant confesses and saith, That before and after the murder was committed, the captain, Charles White, and this examinant consulted what to do with the corpse; and the captain proposed to keep it two or three days in the ship, and, as he expected to go to sea, would sew it up in a hammock, or something else, and there throw it over-board. And that before this examinant and his comrades were sent to seize sir John, as is before set forth, they were ordered by captain Goodere, that, if they met with any resistance, they should repel force by force, and were pre-

pared with short heavy sticks or bludgeons for that purpose.

MATTHEW MAHONY.

The Recorder cautioned the jury that this statement was evidence against Mahony only, and was not to be taken as evidence against Goodere.

Vernon said that this concluded his evidence as to the facts; but that as Goodere had made a point as to the position of the ship, he would call evidence to show that the King Road had always been taken to lie within the city and county of Bristol; and that the sheriff's officers of Bristol had always used to execute both city and county process in the King Road.

John Wint and *Lowden* were called, and proved that they had served process out of the Mayor's and the Piepowder Court, and process issued out of the King's Bench, and the Common Pleas, and the Admiralty Court, in the King Road.

Goodere being called on for his defence, said that he would call witnesses to prove that sir John was a lunatic, and that he was doing his best to take care of him.

Mrs. Gethins said that Goodere had asked her for a garret to keep his brother in, for he was a madman; he made no secret of it. She had heard nothing about Mahony having five pounds a month to take care of him. She had heard Goodere talk with his own doctor about his brother.

Mr. Marsh, sworn.

GOODERE—Did you go ashore in the morning about the king's business, or what business did you go about?

MARSH—I had an order about eight o'clock the night sir John was brought on board, to go up in the morning to Bristol for the letters from the Admiralty, and about four of the clock in the morning I was called up to go: but the lieutenant seemed much disordered, and bid me come to him before I set out. I waited on the lieutenant, and told him, that White and Mahony said they had liberty to go on shore, that the captain had given them liberty to go; the lieutenant said, he knew nothing of it. But as it is always my way, before I carry anybody off, I said, I would go to the captain and ask leave. I went to the captain, and asked him, if White and Mahony had liberty from him to go on shore? And he said, Yes, let them go.

GOODERE—Mr. Marsh, did you go upon the king's business, or on purpose to take up these men?

MARSH—I went about the king's business.

VERNON—But it was after sir John was brought on board, that Mr. Goodere ordered you to go up?

MARSH—Yes, Sir, it was.

VERNON—Did anybody else go up with you, besides Mahony and White?

MARSH—No, there did not.

VERNON—Did Mr. Goodere give you orders to put them on shore in any particular place?

MARSH—I will do justice between man and man: the captain did not give me orders to put them on shore in any particular place.

VERNON—Were they landed publicly or privately?

MARSH—I put them on shore at the Gibb, about six of the clock in the morning.

GOODERE—Now, may it please you, sir, I shall show that Mahony had business at Bristol that day by appointment, to receive some wages that was due to him; for which purpose I shall call Mr. Dagg.

Abel Dagg, the keeper of Newgate, had had one Mervin in his house as a prisoner for debt. Mahony had a claim against him for wages due to him before he was pressed, and Mervin wished to settle the matter with him. Accordingly Dagg had seen Goodere on the Tuesday or Wednesday before this matter, and he said that he would meet Dagg to accommodate the difference on the Monday following. The captain made the appointment to meet him on the Monday, but he told Taylor, an attorney, that Mahony would come on shore on Monday. He did not know that White had any business on shore on Monday.

Bridget King was sworn.

GOODERE—Mrs. King, will you give the Court an account of what you know of the lunacy of my brother sir John Dineley?

MRS. KING—Please you, my lord, I think he was mad; for he would get up at two or three of the clock in the morning, and call his servants up, and fall a-singing; and then he would go to bed again, and swear it was but twelve o'clock at night, and lie a-bed all day. He would send his boy out all over his grounds to pick up stones, and have the wheel-barrow

rattling about the streets on a Sunday: he hath ringed the bell to call his servants up to his bedside, and when they were come up, he would ask them what they did there, and swear they were come to shoot him? He himself hath gone over all his grounds on a Sunday to pick sticks, and hath sent his servants to market when there was none; and he would be busy in every thing, and hang on the pot himself; and he hath been quite raving mad.

VERNON—Did you live as a servant to sir John?

MRS. KING—I lived as a servant with him in London, and he came down for the air to Tockington; he brought me down to go to Bath.

VERNON—How long did you continue with him?

MRS. KING—A twelve-month, sir.

VERNON—And how durst you venture to live so long with a madman? He did not go mad for love of you, I hope? Have you lived any time in Bristol?

MRS. KING—No.

VERNON—Then I suppose you came but now from London?

MRS. KING—Yes, I did.

GOODERE—Do you believe he was a madman?

MRS. KING—In the actions that I have seen by him, I have reason to think he was a madman.

Mrs. Mary Stafford, sworn.

GOODERE—Mrs. Stafford, will you tell his lordship and the jury what you know of sir John's being a lunatic?

MRS. STAFFORD—Sir John hired me for a housekeeper in London, and told me he had a great many servants, and he wanted a housekeeper. When he

brought me down, he ordered me to his seat at Tockington; where, he said, he had a great deal of company frequently. When I came there, I found there was nothing in what he had told me; for, instead of a great many servants, he had but one: a poor old shattered house, ready to tumble down about one's ears, and the household goods all to pieces: he was a madman, for if I had followed his directions in any thing I should have done mischief. He hath sent me and the rest of his servants to Thornbury market, when there was none; he hath ringed the bell to call his servants to come to his bedside to him, and when we have come up to him, he hath asked us, what we did there? Sir, said I, you called me up; he hath said he did not: and after we had been there a quarter of an hour, he would take a knife, fork, glass-bottle, or anything that came in his way, to throw at us, asking of us, What did we come to rob him? And I was afraid of my life, to live with him. I do believe he was a madman, or else he would never have acted as he did; he would go into the kitchen, and take the pot, and hang it on the fire. I style him a madman by his actions.

VERNON—And must he therefore be hanged himself like a mad dog, think you?

MRS. STAFFORD—I know nothing of that, Sir.

VERNON—How long did you live with sir John?

MRS. STAFFORD—Three months, Sir.

GOODERE—Call Mr. Robert Cock.

THE RECORDER—What do you call him to prove?

GOODERE—My lord, in order to prove sir John Dineley a lunatic. Mr. Cock, will you give an account to my lord and the jury what you know of the lunacy of sir John Dineley?

Robert Cock, sworn.

COCK—My lord, I have known Mr. Dineley at Charlton for some years; I have been several times in his company; I have seen him do several acts of lunacy, as a madman.

VERNON—Where do you live?

COCK—I live in Cumberland, when I am at home.

VERNON—Are you of any business?

COCK—I am an officer belonging to his majesty.

VERNON—What kind of officer?

COCK—A salt officer.

GOODERE—I will not give your lordship and the jury much more trouble. I am entirely innocent; they have not proved that I was present at the death of sir John Dineley.

THE RECORDER—Don't deceive yourself; though they have not proved you was actually in the cabin, when sir John was murdered, yet they have given evidence of that, which (if the jury give credit to) will amount to presence in the eye of the law.

GOODERE—I shall now call some witnesses to my character, and likewise to shew how improbable it is that I should be guilty of the murder of my brother.

Call Mr. Pritchard.

Mr. Pritchard had known Goodere many years; he always bore the character of a good husband, a good neighbour, and a kind friend.

The Rev. Mr. Watkins, three months or half a year before Sir John's death, had told Goodere that Sir John had told him that he had made his will and cut his brother off from everything, and had given his estate to the Footes. The

witness had found Sir John a good neighbour, and a kind friend; he was a man of strong passions, and if any one affronted him, he would let the party know that he did resent it. His tenants, and those the witness had conversed with, said that he was one of the best of landlords.

VERNON—I don't ask you, Sir, concerning his moral character; but whether he was in his senses or not?

WATKINS—In his senses! I saw him last Christmas, he was making up his accounts with several of his tenants; he was then in very good understanding. I take him to have been a man that always had his senses in a regular exercise.

VERNON—What have you heard the prisoner Mr. Goodere say in relation to Sir John's making his will?

WATKINS—I believe he told me that sir John had not the power to make a will; I told him it was my opinion, if they would be reconciled together, sir John's will would not stand.

Mr. Thomas and *Mr. Ashfield* and the *Rev. Mr. Rogers* spoke in general terms to Goodere's good character.

George Forcevil had known him for fourteen or fifteen years; he had a very good character in the neighbourhood; he constantly attended his church twice a day Sundays, and would be there at prayers almost every day. He thought him to be a good man.

Goodere said he would not trouble the Court with any more evidence as to his character; he was deprived of some evidence by reason of his

sickness in gaol, which prevented his friends from coming to advise him about his defence; also there were witnesses on board the ship who might have been of great service to him, but the ship had sailed before he got an order from the Admiralty ordering them to stay on shore.

Frederick drew the Recorder's attention to the fact that there had been several aspersions in the newspapers to the prejudice of Goodere, and that a pamphlet had been published in Bristol called *The Bristol Fratricide*; but he hoped that the jury would not be influenced by such matters against the prisoner.

The jury declared that they had never seen any such pamphlet or newspapers.

VERNON—Mr. Recorder, we must beg leave to ask Mr. Jarrit Smith's opinion, as to Sir John's being a lunatic or not?

SMITH—I am surprised to hear it said by some of Mr. Goodere's witnesses that sir John Dineley Goodere was mad. I knew him fourteen or fifteen years, and conversed with him both in person and by letter; but never discovered that he was in the least disordered in his senses, I always took him to be a man of sound understanding. On the Sunday before his death, he expressed himself with a great deal of good nature and affection at the sight of his brother.

Shepard proposed to call evidence to show that the place where the ship lay was not in the city and county of Bristol.

The Recorder said that the evidence that had

been given as to the service of writs, proved that the King's Road was within the jurisdiction, and it was admitted that the ship lay within the Road. If, however, the prisoner could show that any part of the Road was, or ever had been esteemed to be, within any other county than the county of the city of Bristol, he would hear him. He then asked Mahony if he had anything to say.

MAHONY—I hope your Lordship will consider that I was a poor, pressed servant, and that I was drunk when I made the confession, and I was frightened out of my wits.

MR. RECORDER—You say you were drunk when you made the confession; it is possible, that night when you were taken and brought before the magistrates you were in liquor, but it seems your confession was not taken until the next day.

Vernon then replied on the whole case; confining himself to pointing out that if Goodere was abetting Mahony in killing Sir John, it made no difference that he was not in the cabin at the time that he was killed.

Shepard replied, trying to distinguish Goodere's case from those which had been cited by Vernon, and suggesting that Goodere only brought his brother on board the ship in order that he might take proper care of him; but the Recorder stopped him, pointing out that he was going off from the point of law to matter of fact. He said that he should tell the jury that if they believed that Goodere stood at the cabin door

to prevent any persons coming who might prevent the murder, or to encourage those within in the business they were about, they must find him guilty on the indictment. He then recapitulated the facts in some detail, but did not add any comment. He concluded by laying down the law as to whether Goodere was an accessory to what was done, in the sense already indicated, and told the jury that, in such a case as the present, they would be well-advised not to attach much weight to the evidence given as to Goodere's character.

The jury thereupon retired, and after a short space returned, and found both the prisoners Guilty.

The next day Charles White was tried on a separate indictment for the same murder. He pleaded Not Guilty, but was convicted, chiefly on the evidence of Jones the cooper and his wife, and his own confession.

On the next day all three prisoners were brought up, and having nothing to say for themselves were all sentenced to death.

They were all hung at Bristol on the 15th of April, having confessed the fact. 'The body of Mahony is hung in chains near the place where the horrid fact was committed.'